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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 863 OF 2015

(Arising From Miscellaneous Application No. 198 of 2013

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(Arising from Civil Suit No. 103 of 2013)

- 1. **NAKANJAKO LETICIA**
- 2. **NANSUBUGA PEACE ::::::::::::::::::::::::::::::::::: APPLICANTS**
- 3. **KIZITO ELIJAH**

VERSUS

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- 1. **DERRICK SEGALUMA**
- 2. **ROSCOE NSUBUGA ::::::::::::::::::::::::::::::::::: RESPONDENTS**
- 3. **COMMISSIONER LAND REGISTRATION**

(Under Articles 128(2), (3), 50(2), 28(12), 23(1)(a) of the Constitution of Uganda 1995

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Section 98 of the CPA; Sections 117 and 107 (1)(i),(2) and (3) of the Penal Code Act;

O.41 rr.2 (3), rr.5 and rr.9 of the CPR & Rule 3,4,6,7 & 8 of the Judicature (Judicial

Review) Rules, 2009 and all other Relevant laws).

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

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R U L I N G:

The Applicants herein brought this application purportedly under the cited provisions of the law seeking orders that the Respondents be committed to civil prison for contempt of

court. Further, that the Respondents pay the Applicants damages and compensation of Shs.100 million for the losses incurred, for the continuous harassment, threats and trespass to the Applicant's land/premises in order to purge the contempt. Also, that the Respondents pay a fine of Shs.50 million for contumacious conduct and in order to purge the contempt, and that the Respondent pays costs of this application. I say "purportedly" because the cited provisions are not relevant to this application. It is, however, settled that citing a wrong law under which a suit is brought is not fatal as it does not render the suit incompetent.

The grounds of the application are that;

1. *The Applicant on 06/6/2013 obtained from this Honourable Court a temporary injunction restraining the Respondents, their servants, workmen, representatives and/or agents from evicting the Applicants/Plaintiffs and/or otherwise interfering with the Applicants/Plaintiff's possession of the suit property and/or otherwise alienating property comprised in Plot No. 2461, Block 223 Kyadondo land at Namugongo pending the disposal of the suit until any further orders of this Honourable Court.*
2. *These orders were issues in Court in the presence of the Respondents and their Counsel of M/s Nanteza Muganwa & Co. Advocates.*
3. *The Respondents have disobeyed the Court Order and have on several occasions arbitrarily disconnected Applicants' water supply.*
4. *The Respondents have defied the order by continuously harassing, threatening and trespassing on Applicants' property to defeat the course of justice to Applicants' prejudice.*

5. *The Respondents continue to threaten the Applicants to cede their interests in their property and let the Respondents to sell, alienate and dispose of it despite the order of court.*
6. *The Respondents continuously trespass on Applicants' premises during the night and day at will both person and using Armed Goons to threaten the Applicants and their life.*
7. *The orders are necessary for purposes of ensuring the Applicant Court protection and justice through a fair, free and uninterrupted trial.*
8. *The orders are necessary of its orders in achieving a fair and just disposal of the Applicants' grievance.*

The grounds of the application are amplified by the affidavit of Leticia Nakanjako the 1st Applicant, and opposed in the affidavit sworn by Derrick Segaluma the 1st Respondent. I will not reproduce the respective depositions in the affidavits in the detail in this ruling, but I will summarily capture them in the background below.

Background:

The subject of this application is an order of a temporary injunction issued in **HCMA No. 198 of 2013**. The Applicants in that application, who are the same as herein, obtained an order restraining the Respondents from evicting or otherwise interfering with the Applicants' possession of property in Plot 2461 Block 223, Kyadondo, (suit land) or alienating it till the disposal of the suit or further orders of court.

The Applicants allege that the Respondents have since defied the court orders by continuously harassing, threatening and trespassing on the suit land. The Applicants further allege that they are threatened to cede their interest in the suit property and let the

Respondent to sell, alienate and dispose of it. The Applicants also allege that during the
75 night the Respondents continuously trespass on the suit premises using armed goons to
threaten the Applicants' lives. The Applicants contend that the orders sought herein are
necessary to ensure respect of court orders and to achieve a fair and just disposal of the
main suit.

The Respondents deny contravening the court order in any way. They also deny the
80 allegations that they have arbitrarily disconnected the Applicants' water supply and
contend that they are not responsible for the provision and supply of water to the
Applicants and have never on any occasion disconnected the supply.

The Respondents also contend that the order of temporary injunction did not bar parties
from exploring an out of court settlement to the dispute. That it was in that spirit that
85 through their agent, one Kiyengo Richard, who knew the Applicants proposed a meeting.
That the Applicants were agreeable to the discussion only if the suit land could be sold
jointly and proceeds of sale shared to the parties after deducting brokerage fees. That the
terms were agreeable and Respondents asked their lawyers to reduce them in a consent
judgment in writing, which was done, and it was taken to the Applicants for execution.

90 Further, that the Applicants first sought to consult their lawyers before executing the
consent, but that the Respondents later came to learn the lawyer was opposed to the
settlement. The Respondents contend that the orders sought by this application are
unjustified and would prejudice them if granted. They prayed for the dismissal of the
application with costs.

95 The Applicants were represented by Dr. James Akampumuza of *M/S Akampumuza & Co.*
Advocates, while Mr. Kimala Arnold of *M/s. Muganwa Nanteza & Co. Advocates*

represented the Respondents. Both Counsel made oral submissions and supplied authorities; for which I am thankful to them.

The following are the issues of determination;

100 **(1) Whether the Respondents have acted and or behaved in contempt of the court order.**

(2) What are the remedies available to the parties

Resolution of the issues:

105 **Issue No.1: Whether the Respondents have acted and or behaved in contempt of the court order.**

There is hardly any statutory definition of the term “contempt of court” in Uganda even in those particular legislations that use the term. However, several court decisions have given the meaning to the term by relying and or adopting other authoritative material on the subject. In the case of *Stanbic Bank (U) Ltd & Another vs. The Commissioner*
110 **General Uganda Revenue Authority, HCMA No. 0042 of 2010**, Mulyagonja J, at page 21, cited the case of *Jenison vs. Baker [1972] 1 All ER 997 at pages 1001-1002* where it was held that;

115 **“Contempt of court” is an unfortunate and misleading phrase. It suggests that it exists to protect and dignify of the judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. And solely to this and it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty, of the individual will perish.**

120 *Contempt of court may take many forms. It may consist of what is somewhat*
archaically called contempt in the face of the court, e.g. by disrupting the
proceedings of a court in session or by improperly refusing to answer questions
when giving evidence. It may, in a criminal case, consist of prejudicing a fair
trial by publishing material likely to influence a jury. It may, as in the present
125 *case, consist of refusing to obey an order of the court. These are only a few of*
the many examples that could be given of contempt. Contempts have sometimes
been classified as criminal and civil contempts. I think that at any rate this is an
unhelpful and almost meaningless classification.”

The court in the same judgment (at page 34) went on to hold that;

130 *“Contempt of court can be classified as either (1) criminal contempt, consisting*
of words or acts which impede or interfere with the administration of justice or
which create a substantial risk that the court of justice will be seriously impeded
or prejudiced; or (2) contempt of disobedience of judgments, orders or other
process of court, and involving private injury.”

135 In *Muriisa Nicholas vs. Attorney General & 3 others HCMA No. 035 of 2012*, this court
relied on the definition of “contempt” as given in *Black’s Law Dictionary, 7th Edition, at*
page 8-9 that;

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

Similar stance was taken in *The Proctor & Gamble Co. vs. Kyole James Mutisho & 2 Or's*, HCMA No. 135 of 2012, in which Kiryabwire J, (as he then was) quoted with approval the case of *Jenison vs. Baker (1972)1 ALL ER 997* (at pages 1001 -1002) where the forms of contempt were elucidated by Salmon LJ that there are many forms of contempt but which may be broadly classified as criminal or civil contempt. Further, in *Stanbic Bank (U) Ltd, & Jacobsen Power Plant Ltd vs. Uganda Revenue Authority*, HCMA No. 42 of 2010, Mulyagonja J, held that criminal contempt is where *Section 107* of the *Penal Code Act* is involved, while civil contempt is a common law misdemeanor to be applied by virtue of *Section 14 (2) (b) and (c)* of the *Judicature Act (Cap 13)*.

In the instant application, the order the subject of contention essentially restrained the Respondents from evicting or otherwise interfering with the Applicants' possession of property in Plot 2461 Block 223, Kyadondo, or alienating it till the disposal of the suit or further orders of court.

Counsel for the Applicant submitted at length, but mainly that the Respondent continues to threaten the Applicants to cede their interest in the suit property and let Respondents sell, alienate and dispose of it despite the court order. To back this, Counsel relied on *Annexure "B"* to the affidavit of the 1st Applicant. This is a draft "*consent judgment*" drawn by the Respondents' lawyers in which certain terms were proposed which Counsel for the Applicants contends were not negotiated between the parties, and that by the said document the Respondents want to bring themselves into joint ownership of the land. Counsel argued that if the sale goes on it would have the effect of evicting the Applicants.

Counsel for the Respondents replied, and rightly so in my view, that *Annexure “B”* that
165 the Applicants’ Counsel was submitting upon is largely a suggestion that was made by
Counsel representing the 1st Respondent and that it does not in any way amount to
contempt or disobedience of an order of court.

I entirely agree with Counsel for the 2nd Respondent that *Annexure “B”* referred to does
not fall within the realm of contempt of orders of court. It merely constitutes a proposal
170 by the Respondents of a settlement of the dispute out of court with the Applicants. It was
never signed by any of the parties and as such of no effect at all for as long as the
Applicants never endorsed or agreed to it.

Similarly I do not see how a draft document merely proposing a settlement of a dispute
out of court by one of the parties could amount to contempt of the court order. The order
175 in issue did not prohibit parties from exploring other avenues of settlement of the dispute
out of which the order emanated. In fact the attempted settlement fits well within the
policy and practice of court to encourage parties to undertake out of court settlements of
disputes to avoid litigation with its obvious attendant disadvantages of costs, time, to
mention but a few.

180 At the same time, I find that there is no threat of any kind posed to the Applicants by
Respondents that can be read into the content of *Annexure “B”*. The order of temporary
injunction is quite categorical on what it required to be or not to be done by the parties.
Even stretching the terms of the order of temporary by far, “threatening” the Applicants
would not be one of them. If in any case, there was any such threat or harassment of
185 Applicants by “goons” of the Respondents, these would ordinarily fall outside the terms

of the order of temporary injunction and could be dealt with in the usual manner by reporting such threats/harassment to police.

The Applicants also raised the issue that the Respondents harass them, and gave one such instance in which they allege disconnection of water supply to them by Respondents.

190 The Respondents in reply deny this, and rightly so in my view, stating that they are not responsible for water supply to the suit premises or how they disconnect it.

There is no evidence that was adduced by the Applicant showing that the Respondents are responsible for the supply of water to the Applicants. Providing water supply is the responsibility of the water service provider. If however, the Respondents simply cut off
195 the water supply which Applicants enjoy and pay for, that would be a case to be reported to police and the water service provider. Otherwise it does not in any way whatsoever amount to an act in contempt of the court order.

On the whole, I find that this application lacks merit. The Applicants seem to be merely busy bodies attempting hard to find fault over which to litigate with the Respondents over
200 the court order issue. No act or conduct or behavior or otherwise; of the Respondents being in contempt of court order has been demonstrated by the Applicants. The application is therefore dismissed with costs.

BASHAIJA K. ANDREW
JUDGE
04/12/2015

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