

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

MISC APPLICATION NO. 0872 OF 2017

[ARISING FROM CIVIL SUIT NO. 2829 OF 2015)

1. FATUMA DUSTO NALUMANSI
2. MRS. NSUBUGA HARRIET
:.....: **APPLICANTS**
3. NKUMBI GODFREY SALONGO
4. NANKYA REGINA

1. ISA BUKENYA
2. EDWARD NGOBYE:
:.....: **RESPONDENT**

VERSUS

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant sought orders of Court for contempt of Court and among others as per their Notice of Motion. The grounds in support are in the affidavit of Nkumbi Godfrey, but majorly that this Court gave an order dated 24th November 2015 in Misc. Application No. 1032 of 2015, ordering no further construction of new areas until other directions by the Judge, but the Respondents continue with their developments, and are in contempt.

The Respondents in reply by affidavits of Bukenya and Ngobye Edward opposed the application and denied the fact of contempt.

I have perused the application and listened to the Applicants in submission.

The law is that all Court orders whether irregular, *null and void* must be obeyed. **See Housing Finance Bank Ltd versus Edward Musisi; Court of Appeal Misc. Application No. 158/2010.**

Also **Worldlife Lodges Limited versus County Council of Narok and Another (2005)2 EA.334 (HC/C)** i.e., a Court order is never given in vain and the parties have the duty to ensure compliance.

In this case, the order was an interim order dated 24th November 2015. The order was interim for one week, pending directions of the trial Judge. The same order alluded to '*No further constructions in the new area until the Judge directs otherwise.....*'

From the record and pleadings, the Applicants allege that the Respondents have disobeyed this order. The Defendants have sworn affidavits denying and placing their word as against her word.

Given the fact that these orders were given in the interim, the Applicant's allegations relate to a period extending beyond the life time of the interim order whose life time was subject to the Judge's directions.

I do not see what directions the Judge gave in furtherance of this matter, to enable parties conform to the Court order.

However, even if the order was to remain in its format, the burden to prove contempt is on the one alleging. From the evidence on

record, this Court cannot conclusively hold the Respondents in contempt in view of the reply by Bukenya and Ngobye, specifically denying the alleged actions.

Even after Nkumbi's affidavit in rejoinder, there is not much value added since it merely re-asserts the fact that he is the one telling the truth not the Respondents. Court is then left wondering who to believe. The facts raised in rejoinder require specific evidence and proof which is lacking on record.

By virtue of the Rules of Evidence under Sec 101, 102 & 103 of the Evidence Act, it is provided that:

'he who alleges must prove' . This application lacks the evidence to prove that any of the Respondents have disobeyed the said Court order.

This application is not proved. It is dismissed. Costs in the main cause.

I so order.

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Henry I. Kawesa

J U D G E

23/10/2017