

UGANDA / JUDGMENT

Agaba v Mpungu and Another (Civil Miscellaneous Application 95 of 2021) [2024] UGHC 502 (27 February 2024) [2024] UGHC 502

COURT
High Court of Uganda

BEFORE
Oyuko Anthony Ojok, J

CASE / FILE NUMBER
Civil Miscellaneous Application 95 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISCELLANEOUS APPLICATION NO. 95 OF 2021

(Arising out of Land Case No. 31 of 2017)

AGABA ROGERS KYALISIMA..... \$\mathsf{S}\$

VERSUS

1. MPUNGU HERBERT KAKOMA

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2. SENTABADE BRUHANE.....

\$10\$ BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK

Ruling

The applicant brought the instant application by way of Notice of Motion under Order 52 Rules 1 and 2 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act against the respondents seeking the following orders;

- a. The respondents be arrested and committed to civil prison for committing contempt of court orders.
- b. The respondents pay UGX 100,000,000/ \$=\$ for committing contempt of court orders.
- c. The respondents be further restrained from trespassing and constructing on the applicant's land comprised in Mawokota Block 268 Plots 37 and 39 land at Kayabwe and Lubanda in Mpigi District and/or carrying out any dealings thereon.
- d. Costs of the application be provided for.

The application is supported by an affidavit sworn by the applicant and the \$25\$ grounds briefly are as follows:

- 1. That the applicant filed Civil Suit No. 31 of 2017 claiming interest as the rightful owner of land known as Mawokota Block 268 Plots 37 and 39, land at Kayabwe and Lubanda in Mpigi District.
- 2. That Civil Suit No. 31 of 2017 was heard and determined and the applicant was declared the rightful owner of the said land.
- 3. That court also issued a permanent injunction against the defendant a one Senfuka Bagenda, his agents and all people deriving interest from him, restraining them from trespassing on the suit land belonging to the applicant.
- 4. That the respondents are agents of the said Senfuka Bagenda who at all material times have been aware of the applicant's interest on the suit

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land and the court order which was served upon them but they have disobeyed it hence committing contempt of court.

- 5. The respondents have gone ahead and trespassed on the applicant's land and illegally constructed and are still constructing illegal structures thereon hence committing contempt of court orders.
- 6. That the acts of the respondents are occasioning great pain and damage upon the applicant.
- 7. That it is in the interest of justice and fairness that this application is granted.
- 10 The application was opposed by both the respondents in their respective affidavits in reply and briefly stated as follows:

- a. The respondents denied being agents of Bagenda Senfuka. The 1st respondent stated that on 2/10/2005 he and Emmanuel Ssempijja bought a kibanja from Balwolela Nzelena at UGX 300,000/= and on 23/12/2015\$ he bought a plot measuring 50ft x 50ft from Nakirijja Aisha who is a granddaughter to Balwolela Nzelena at the same place, where he is constructing a house. That the land he bought has three graves, one for Late Nzelena Balwolela, the other for her son and a grandchild.
- b. The 2nd\$ respondent is a son to late Mawanda Ramazan who died on 22nd\$ May, 1979 who used to live on the suit land up to the time when he died and was buried on the suit land. He had 11 children who grew up on the suit land.
- c. That upon the death of their father, the kibanja at Kayabwe was subdivided and shared amongst the children as per the agreement dated 20/10/2006\$ where the 2nd respondent took possession and uses the same to date.
- d. That the 2nd respondent came to know Bagenda when he bought a kibanja from a one Kabaya whose real name was Musazi Robert around 2011 who after buying land had no access road. Whereof he contacted Kaddu Yusuf Mukasa the respondents' brother who sold to him an access road at UGX 4,000,000/= and the 2nd\$ respondent witnessed the transaction. The agreement was attached to the affidavit.
- e. That the respondents were surprised when they were summoned to appear in court on allegations of disobeying a court order while they were not parties to the main suit.
- f. That the applicant is abusing this court by instituting unnecessary applications in order to fraudulently take their land.

The applicant filed affidavits in rejoinder to the respondents' affidavits in reply 40 and stated that the averments of the respondents were all falsehoods.

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Representation:

Mr. Lukwago Gerald appeared for the applicant while Mr. Mwebasa Richard appeared for the respondents. Both parties filed written submissions.

Issues:

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- 1. Whether the respondents are in contempt of court orders?
- 2. What remedies are available to the parties?

Submissions:**Issue 1: Whether the respondents are in contempt of court orders?**

Counsel for the applicant submitted that for it to amount to contempt of court, it must be established that;

- i. There is a lawful court order.
- ii. The potential contemnor has knowledge of the order.
- iii. The potential contemnor has failed to comply with the court order.

There is a lawful court order:

15 Counsel for applicant submitted that there is a decree in Civil Suit No. 31 of 2017 which was issued by this Honourable Court and this is not in dispute.

Knowledge of the order:

Counsel for the applicant submitted that the respondents are aware of the court order but chose to ignore the same. That the respondents are agents of Senfuka Bagenda whom the applicant litigated with in Civil Suit No. 31 of 20 2017. Therefore, they used to follow up the matter and were aware of the court order and have gone ahead and constructed illegal structures on the land.

Further, that the 1st respondent is a Chairperson LC1 of the area where the suit land is situated and he was served with the court order during the clearance process before execution of the decree.

Furthermore, that both respondents were present when Senfuka Bagenda was being evicted. That the respondents have been reported to various authorities. Therefore, they are aware of the court order. Counsel relied on the case of

Housing Finance Bank v. Speedway Auctioneers, M. A No. 158 of 2010, where it was held that;

> "It is trite that a party who knows of an order, regardless of whether" in view of the party, the order is null or valid, regular or irregular cannot be permitted to disobey it. Thus, it is not necessary for someone to be a party to the suit and what is required is the knowledge of the order which the respondents have been aware of hence contempt.

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Counsel for the respondents on the other hand quoted the definition of contempt of court according to Osbourne's Concise Law Dictionary, P. 102 as follows;

"Contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the court 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."

Counsel went on to submit that the applicant filed civil suit no. 31 of 2017 against Senfuka Bagenda, the matter was determined in favour of the applicant. That the respondents in the instant case have no relation to Senfuka Bagenda and are not his agents. That the respondent stated that he inherited his land from his father the late Mawanda Ramazan who occupied the suit land in 1934 and bought part of his land from his paternal aunt Aida Nakawagga.

Further, that the respondents occupied their land before Senfuka Bagenda and even the respondent's brother is the one who sold an access road to him. As such the applicant wants to fraudulently take the respondents' land.

Counsel concluded that the respondents were not aware of the court order and were not party to the suit.

Failure to comply: 20

Counsel for the applicant submitted that the respondents despite having knowledge of the court order went ahead and trespassed on the applicant's land and illegally constructed on the same and continue to erect various structures. Thus, committing contempt of court orders.

Counsel for the respondents on the other hand submitted that the applicant did not show any proof that the respondents were agents of Senfuka Bagenda and that they were served with the court order or disobeyed it. That in the instant case the respondents were not availed with the court order since they were not party to the suit and nor are they agents of Senfuka Bagenda. As such the application should be dismissed. 30

Issue 2: remedies available to the parties

Counsel for the applicant submitted that the respondents pay UGX \$100,000,000 or be committed to Civil Prison and the application be granted while the respondents prayed for costs under Section 27 of the Civil

Procedure Act and for the application to be dismissed. 35

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Analysis of court:

Black's law Dictionary, 10th Edition page 385, defines civil contempt as;

"The failure to obey a court order that was issued for another party's benefit. A civil contempt proceeding is coercive or remedial in nature. The usual sanction is to confine the contemnor until he complies with the court order."

In the case of *Ssempebwa and Others v. Attorney General*, [2019] 1 E. A 546, the Supreme Court set down the ingredients of civil contempt, which an applicant must prove in order to succeed, namely; the order; service or notice thereof; non-compliance; and wilfulness and **mala fide** beyond reasonable doubt. Thus, for one to be held in civil contempt, the following requisites must

be proved;

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- a. That an order was issued by court.
- b. That the order was served or brought to the notice of the alleged contemnor.
- c. That there was non-compliance with the order by the respondents.
- d. That the non-compliance was wilful and **mala fide**. (See: *Okwanga George & Another v. Okello James Harrison*, Miscellaneous Application No. 132 of 2021). Therefore, the first three elements must be proved on the balance of probability while the fourth ingredient must be proved beyond reasonable doubt.

I will resolve the preconditions for the grant of the application concurrently.

The Applicant in the instant case filed civil suit no. 31 of 2017 against Senfuka Bagenda, the matter was determined in favour of the applicant. There is therefore a decree in Civil Suit No. 37 of 2017 which was issued by this \$25\$ Honourable Court and this is indeed not in dispute. Thus, there is a valid court order that was granted by this honourable court.

In regard to knowledge of the court order, the respondents contended that they were never party to the main suit which is true. The applicant in this case did not adduce any proof that there was service of the court order onto the

respondents. Even though the applicant alleges that the respondents did attend court while the main suit was being heard this allegation is not supported by any evidence. The respondents also denied being agents of Senfuka but rather stated that they had rights to the suit property having obtained their interests through purchase and inheritance. 35

The \$1^{st}\$ respondent stated that on \$2/10/2005\$ he and Emmanuel Ssempijja bought a kibanja from Balwolela Nzelena at UGX 300,000/= and on \$23/12/2015\$ he bought a plot measuring 50ft x 50ft from Nakirijja Aisha who is a granddaughter to Balwolela Nzelena at the same place, where he

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\$20\$

constructed a house. That the land he bought has tree graves, one for Late Nzelena Balwolela, the other for her son and a grandchild.

The 2nd respondent that he is a son to late Mawanda Ramazan who died on 22nd May, 1979 and used to live on the suit land up to the time when he died and was buried on the suit land. He had 11 children who grew up on the suit land. That upon the death of their father, the kibanja at Kayabwe was subdivided and shared amongst the children as per the agreement dated 20/10/2006 where the 2nd respondent took possession and uses the same to date.

- \$10 Further, the 2nd respondent stated that came to know Bagenda when he bought a kibanja from a one Kabaya whose real name was Musazi Robert around 2011 who after buying land had no access road. Whereof he contacted Kaddu Yusuf Mukasa the respondents' brother who sold to him an access road at UGX 4,000,000/= and the 2nd respondent witnessed the transaction. The 2nd respondent added that he inherited his land from his father the late Mawanda 15
- Ramazan who occupied the suit land in 1934 and bought part of his land from his paternal aunt Aida Nakawagga.

Furthermore, that the respondents occupied their land before Senfuka Bagenda and even the 2nd respondent's brother is the one who sold an access

road to him. As such the applicant wants to fraudulently take the respondents' \$20\$ land.

The respondents in this case were never party to the main suit where the applicant sued Senfuka Bagenda. The applicant argued that the respondents were aware of the court order because he had reported their activities on the

suit land to various offices. However, in my opinion reporting to the various 25 authorities does not mean that the parties were aware of the court order since it was never issued against them as they also denied being agents of Senfuka Bagenda. Nor did the applicant prove to this court that the court order in this case was ever served on the respondents or brought to their attention. I 30 therefore, find that this prerequisite was not proved by the applicant.

The respondents having not been party to the main suit and there being no proof of service of the court order upon them, I find that this court is unable to find them as not being in compliance with the same since they also make claims to the land having obtained their interests through inheritance and purchase. Thus, it cannot be said that there was non-compliance which was wilful and mala fide.

I therefore, find that the respondents in the instant are not in contempt of the court orders and resolve issue one in the negative.

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On the issue of the costs:

The respondents in the instant case prayed for costs for the application be provided. The general rule is that costs follow the event, that is, the outcome of a given case, unless there is a good reason for the court not to award costs. which must be stated.

It is trite that in all matters of costs, courts should exercise discretion, and this must be done judiciously. (See: Section 27 of the Civil Procedure and the case of Uganda Development Bank V. Muganga Construction Company & 2 Others [1981] H. C. B 35).

- The applicant in the instant case has failed to prove the preconditions for the \$10\$ grant of the application. The respondent as per the resolution under issue one above are found not to be in contempt of the court orders in Civil Suit No. 31 of 2017 as such the application is found to be without merit. It is hereby dismissed with costs to the respondents.
- Right of appeal explained. 15

OYUKO ANTHONY OJOK

JUDGE

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