

UGANDA / JUDGMENT

**Attorney General & Anor Vs Lukwago
Erias & Anor (Civil Application No. 0114
of 2014) [2019] UGCA 125 (24 May 2019)**
[2019] UGCA 125

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Civil Application No. 0114 of 2014

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPLICATION NO. 0114 OF 2014

(Arising from High Court Misc. Application No. 94 of 2014)

1. ATTORNEY GENERAL

2. KAMPALA CAPITAL CITY AUTHORITY ::::::::::: APPLICANTS VERSUS

LUKWAGO ERIAS LORD MAYOR

KAMPALA CAPITAL CITY::::::::::::::::::::::::::::::::::

\$10\$

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(CORAM: Kenneth Kakuru, Musota, Madrama JJA.)

RULING OF STEPHEN MUSOTA, JA

This application was filed under Rules 2(2), 40(2) (b) of the Judicature (Court of Appeal Rules)
Directions seeking for orders that; \$15\$

- (a) The applicant be granted leave to appeal against the ruling and orders of Her Lordship Justice Lydia Mugambe in respect of Civil Application No. 94 of 2014 arising from Miscellaneous Application No. 451 of 2013 arising out of M. A 445 of 2013 wherein she overturned the resolution of the councilors to remove the respondent from office as Lord Mayor of Kampala.
- (b) The applicants be granted leave to appeal against the ruling and orders of Lady Justice Lydia Mugambe, declaring that Hon. Peter Nyombi, Hon. Frank Tumwebaze, Jennifer Semakula Musisi, Cheborion Barishaki, Martin Mwambutsya, Caleb Mugisha, Dickinson Akena and Eric Sabiti together with all senior officials from the Ministry of Justice and all senior officials from Kampala Capital City Authority were in contempt of the orders of the High Court issued on the 25th November 2013.
- (c) Costs of this application abide the result of the intended appeal.

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\$20\$

\$25\$

The grounds upon which the application is premised as set out in the notice of motion are that:

- (a) The applicants who were respondents in Miscellaneous Application No. 94 of 2014 were restrained from purportedly acting in contempt of a court order by inter alia declaring the seat of Lord Mayor Kampala Capital City Authority vacant pending the determination of Misc. Cause No. 362 of 2013.
- (b) The Applicants being aggrieved and dissatisfied with the ruling and orders of the High Court applied for leave to appeal the decision of Hon. Lady Justice Lydia Mugambe.
- (c) Hon. Lady Justice Lydia Mugambe denied the applicants leave on the ground that it would "prejudice the respondent."
- (d) That the holding of the High Court departed from the law on contempt by holding in contempt people who had not received the
- order of court and who were not accorded a hearing at all and further by holding advocates in contempt for their submissions *warrants a second judicial opinion.*
- (e) That the intended appeal raises serious questions of fact and law regarding contempt, service of court orders, vacation of office of
- the Lord Mayor, conduct of matters by advocates at the bar, liability of witnesses in a court of law, bias of judicial officers and the constitutional non-derogable right to a fair hearing before an independent and impartial tribunal.
- (f) That it is in the interest of justice that leave to appeal be granted.

(*g*) *The application has been brought without inordinate delay.*

The application is supported by the affidavit of Jennifer Musisi Semakula.

The respondents filed an affidavit in reply deposed by Mr. Lukwago Erias who states that:

1. That this application is frivolous, vexatious, bad in law and an abuse of court process in as far as the persons who were found to be in contempt of court order have not shown any dissatisfaction with the court order and none of them has taken *any steps to challenge the court order.*

\$10\$

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\$15\$

\$25\$

\$20\$

- 2. That the issues raised and the matters deposed to by Mr. George Kalemera and Jennifer Musisi Ssemakula are in respect to my previous term of office as the Lord Mayor which ended some time back in May 2016 and the application has been overtaken by events.
- 3. That the applicants abused the interim order issued by the Hon. Mr. Justice Steven B. K Kavuma, the Deputy Chief Justice (as he then was) by locking my office as the Lord Mayor up to the end of the term.
- 4. That I was again re-elected as the Lord Mayor, Kampala Capital \$10\$ City Authority and assumed office on the 6th day of June 2016 and in an Authority meeting of \$10^{\text{th}}\$ January 2017, the \$2^{\text{nd}}\$ applicant took a decision that all court cases between KCCA and *myself (including this application) be withdrawn.*

15 Representation

At the hearing of this application, Ms. Imelda Adong appeared for the 1st applicant and Mr. Denis Byaruhanga appeared for the 2nd applicant while Mr. Katumba Chrysostom and Mr. Nathan Mpenje appeared for the respondent.

\$20\$ Applicant's submissions

The applicant's counsel submitted that one is found in contempt of court order when they are in knowledge of that order. The people held in contempt of court could not have acted in contempt of the order without knowing the contents therein. That by the time they received

- the court order, they had already proceeded with the meeting. \$25\$ Counsel relied on the case of Hajji Numan Mubi Vs Friends Estate & another Court of Appeal Civil Application No.241 of 2011 on the position of the law that leave to appeal from an order in civil proceedings will normally be granted where it appears that there are
- grounds of appeal which merit serious consideration. Counsel re-30 stated the grounds of the intended appeal.

Respondent's submissions

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In reply, counsel opposed the application and raised a preliminary objection that the 1st applicant, the Attorney General, did not file an affidavit in support of the application but simply filed 2 additional affidavits in absence of a first affidavit. Counsel submitted that the application has been overtaken by events because it arose out of the impeachment of the lord mayor in 2011 and the lord mayor was reelected in 2016. In addition, the applicants cannot say they were not aware of the court order yet they were represented.

Resolution of the application

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This application was brought under rule 40 (2) (b) of the Judicature \$10\$ (Court of Appeal Rules) Directions which states that:

"(2) *Where formerly an appeal lay from the High Court to the Supreme* Court with leave of either the High Court or Supreme Court the same rules shall apply to appeals to the court—

- (b) if the High Court refuses to grant leave, or where an appeal \$15\$ otherwise lies with leave of the court, application for the leave shall be lodged by notice of motion within fourteen days after the decision of the High Court refusing leave, or as the case may be, within fourteen days after the decision against which it is desired to appeal; and the decision of the court granting or refusing to grant leave is final." \$20\$

The law governing the granting of leave to appeal is well settled. In the case of Sango Bay Estates Ltd & Others vs Dresdner Bank AG [1971] EA 17, Spry V. P at page 40 stated the principle upon which leave to appeal may be granted as follows:

"As I understand it, leave to appeal from an order in civil proceedings \$25\$ will normally be granted where prima facie it appears that there are *grounds of appeal which merit serious judicial consideration...*"

What should be considered is whether there are arguable grounds of an appeal. The applicants contend that the intended appeal raises serious legal issues for judicial consideration such as whether or not a person or an individual can be held to be in contempt of court orders when that person has not had knowledge of the order in issue. In addition, whether the decision which also affected the advocates

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representing the applicants had the effect of violating the applicant's legal representation. I have not found arguable points of law that merits judicial consideration by an appellate court. The individuals affected by the court order claim not to have had any knowledge of the said order. This cannot be the case because the individuals actually had legal representation in court at the time the order was made. The Attorney General was in court and ought to have communicated the court order to the affected parties.

An arguable point must relate to the ruling of the court showing that there is a possibility that the court erred in law and the order could be overturned on appeal. I have not found such arguable points of law in this case. The order holding the parties in contempt had no sanction against the persons. None of the affected persons has complained or shown any dissatisfaction or taken any steps to challenge the court order holding each in contempt. I also note that the proceedings giving rise to this application arose out of the impeachment of the Lord Mayor in the 2011 term of office. The issues raised and the matters deposed to by Mr. George Kalemera and

Jennifer Musisi Ssemakula are in respect of the term of office of the Lord Mayor which ended in May 2016. The Lord Mayor was re-elected again in 2016 for a new term which runs to date. This application is therefore overtaken by events.

In the premises, the Applicant's application lacks merit and is dismissed with costs.

I so order.

Dated this 24th day of ______ 2019

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Stephen Musota, JA

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THE REPUBLIC OF UGANDA.

IN THE COURT OF APPEAL OF UGANDA AT KAMPAIA

CIVIL APPLICATION NO 0114 OF 2014

(Arising from High Court Civil Miscellaneous Application No 94 of 2014)

1. ATTORNEY GENERAL $\overline{8}$
2. KAMPALA CAPITAL CITY AUTHORITY}.....

VERSUS

LUKWAGO ERIAS LORD MAYOR KAMPALA CITY}.....

\$12\$

RULING OF CHRISTOPHER MADRAMA IZAMA, JA

I have read in draft the ruling of his Lordship Hon. Mr. Justice Stephen Musota, JA. I agree with the order proposed in the ruling on the grounds given therein that the application was overtaken by events except that I would not comment on whether arguable points are raised in the application.

- I wish to further agree that in any case, the parties who were said to have been in contempt of court have not applied to this court and cannot say anything about the contempt. I also add that no sanctions of any kind were ordered against any
- of the parties not before the court and on whose behalf the application was filed \$20\$ to challenge their being mentioned as being in contempt of court orders.

For the above reasons I agree with the order proposed that this application be dismissed with costs.

Dated at Kampala the $\frac{2}{2}$ day of May 2019 $\overline{24}$

Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA****CIVIL APPLICATION NO. 0114 OF 2014**

- 1. ATTORNEY GENERAL
- 2. KAMPALA CAPITAL CITY AUTHORITY

VERSUS**1. LUKWAGO ERIAS LORD MAYOR 2. KAMPALA CAPITAL CITY**

Hon. Mr. Justice Kenneth Kakuru, JA CORAM: Hon. Mr. Justice Stephen Musota, JA Hon. Mr. Justice Christopher Madrama, JA

RULING OF JUSTICE KENNETH KAKURU. JA

I have had the benefit of reading in draft the ruling of my learned brother the Hon. Mr. Justice Stephen Musota.

I agree with him that this application is devoid of any merit and ought to be dismissed with costs.

Since Justice Christopher Madrama, JA also agrees it is so ordered.

$\frac{1}{2}$ day of \$1.2019.\$ Dated at Kampala this

Kenneth Kakuru **JUSTICE OF APPEAL**

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