

UGANDA / JUDGMENT

Bacumikire Fred v Mwesigye George, Busesire Geoffrey & Innocent (Miscellaneous Application 338 of 2023) [2024] UGHC 5 (9 January 2024)

[2024] UGHC 5

COURT

High Court of Uganda

BEFORE

Kazibwe, J

CASE / FILE NUMBER

Miscellaneous Application 338 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE

MISCELLANEOUS APPLICATION NO.338 OF 2023

(Arising from Civil Suit No.17 of 2022)

BACUMIKIRE FRED

APPLICANT

VERSUS

- 1. MWESIGYE GEORGE
- 2. BUSESIRE GEOFFREY
- 3. INNOCENT

RESPONDENTS

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI RULING

The Applicant filed a Notice of Motion under section 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules for Orders that:-

- 1. The respondents be arrested and committed to civil prison for contempt of Court Orders.

- 2. The respondents pay UGX. 100,000,000/= for contempt of court orders
- 3. The respondents further be restrained from trespassing by cultivating or doing anything on the suit land comprised in Singo Block 127 LRV 2773 Folio No.15 measuring 259 hectares in Kassanda District.
- 4. Costs of the application be provided for.

The grounds of the Application are that the Applicant filed Civil Suit No.17/2022 claiming interest as a registered owner of land comprised in Singo Block 127LRV 2773 Folio No.15 and the suit is pending hearing. At the instance of the Applicant the court on 26th July 2023 issued an order

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restraining the respondents, their agents, employees, assignees or successors from carrying out any activity on the suit land until further orders.

The Respondents however went ahead to trespass by cultivating the suit land and erecting a barbed wire fence by denying the applicant's cows access to a water dam. On 19th August 2023 the Applicant reported the violation to the District Police Commander who promised to investigate and take any necessary action.

On 28th August 2023 on orders of the 1st and 2nd respondents, the 3rd respondent hired about 50 workers to cultivate the suit land which prompted the Applicant to inform the District Police Commander. On his intervention, the respondents ran away abandoning some garden tools which were confiscated by the Police.

The Applicant contends further that his cows are suffering since the water dam was fenced off and it is in the interest of justice that the application be granted. The grounds are further reiterated in the Affidavits sworn by the Applicant and his son Bulimwaka with photographs of the activities alleged to have been contemptuously carried out after the court order was issued.

The Application was opposed through Affidavits in Reply deposed by the Respondents.

The 1st Respondent claims to have received a court order on 4th July 2023 through his Advocate halting activities for three (3) days and requiring his Advocate to appear in court on 21st August 2023. The parties appeared in court and the Order was not extended but the Resident District Commissioner informed him of the stoppage of cultivation and planting.

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The 1st Respondent disputes the photographs taken by the Applicant and accuses him and his Lawyer of disrupting their activities and filing irrational applications yet he got a Permanent Injunction in another matter and he is in full occupation of the suit land.

The 2nd Respondent denied the alleged contempt and occupation of the Applicant's land or any attempt to execute any court order. He contends that on 7th September 2023 Police removed his workers' shelter and that a one Kavuma had earlier evicted the Applicant from his known land which he sold to a one Kiconco.

That the Applicant's Lawyer caused his arrest and allocated the suit land to various people and has harassed the Respondents with the intention to instil fear in them so that their land is taken.

The 3rd respondent also denies any contempt of the court order and contends that the Applicant's Lawyer camped on the suit land and purported to distribute his boss's gardens to other people using Police to forcefully evict the Respondents.

Representation.

Mr. Mwebesa Richard appeared for the Applicant while Mr J. P Baingana appeared for the Respondents.

Counsel filed submissions which have been considered in rendering the decision.

Analysis of evidence and Decision of the Court.

The Black's Law Dictionary, 7th Edition defines contempt of court to mean "conduct that defies the authority or dignity of court."

The Halsbury's Laws of England, Volume 9(1) Reissue classifies contempt of court as either Criminal or Civil. Criminal contempt consists of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced.

Contempt in procedure, otherwise known as civil contempt, consists of disobedience to the judgment, orders or other process of the court and involves private injury.

The case of Sitenda Sebalu V The Secretary General of the East African Community, Ref. No.2 of 20129(EACJ) set out the pre-conditions to be satisfied before a court can hold a respondent in contempt. They are :-

- \$(i)\$ The existence of a lawful order
- \$(ii)\$ Knowledge of the order
- \$(iii)\$ The contemnor's ability to comply
- \$(iv)\$ The potential contemnor's failure to comply.

The elements that must be established by an applicant in a civil contempt proceeding were set out by the Supreme Court of Canada in Carey V Laiken. 2015 SCC 17 to be:

- The order alleged to have been breached must state clearly and \$(i)\$ unequivocally what should not be done.

- The party alleged to have breached the order must have had \$(ii)\$ actual knowledge of it.
- \$(iii)\$ The party allegedly in breach must have intentionally done the act the order prohibits or intentionally failed to do the act that the order compels.

The Supreme Court of Uganda in the case of Betty Kizito V Dickson Nsubuga & 6 others. SCCA No.25 and 26 of 2021 observed that

Even where the applicant satisfies all the elements required to prove civil contempt, a court entertaining contempt proceedings still possesses the power to decline to make a finding of contempt where the alleged contemnor shows court that he acted in good faith and was

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taking reasonable steps towards compliance with the order. The remedy of contempt is a last resort and should be used with great restraint."

In Carey V Laiken (supra) it was stated that:

"If contempt is found too easily, a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect."

The Order alleged to have been breached was issued at the instance of Counsel for the Applicant who argued that the Respondents were evicting his client from the suit land even when no court order to the effect had been issued. The court issued the order restricting the alleged unlawful eviction and any activity on the suit land.

Civil Suit No.017 of 2012 was fixed the case for hearing on 21st August 2023 so as to get to the merits of the claims by both sides given the allegations made by Counsel for the Applicant.

On the Applicant filing the present application, the court directed the Assistant Registrar to visit the suit land to establish the position which per the report dated 30th October 2023 was done in the presence of the parties and their Counsel. It was the finding of the Registrar that the Applicant occupied approximately 2 acres of the suit land from which he had fled to Gomba from where he came for the locus inspection.

The rest of the suit land was occupied by the Respondents. The Registrar noted that some attempt at planting had been made on part of the suit land but halted due to the Court order. The Respondents had however planted maize on another part of the suit land and the \$1st Respondent conceded to having hired a tractor to plough his part of the land after the court order was issued.

The halting of planting on one part of the suit land but continuing with the same activities on another part of the same piece of land points to the knowledge of the Order by the Respondents. It further points to the intentional breach of the Order by the Respondents. Counsel for the Respondent argued that the existence of the Order was brought to the attention of the Respondents on 15th August 2023 which only justifies the halted planting.

The maize planted on part of the suit land seen by the Assistant Registrar was one week old as at the 30th October 2023 which implies it was planted in October 2023 when the existence of the Order had been brought to the attention of the Respondents by their own Counsel and in the meeting held by the Resident District Commissioner on the same date.

In *Hadkinson V Hadkinson* [1952] 2 ALL ER at Page 569 Romer L J held that:

" A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it as long as it existed."

In the Kenyan case of **Republic V County Chief Finance Officer**, Finance &Economic Planning (Ex parte David Mugo Mwangi) 2008 KLR the court observed:

'Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying therewith, the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a court order is made in a suit the same is valid unless set aside on review or on appeal."

In *Housing Finance Bank V Speedway Auctineers*. MA No.158 of 2010 the Court of Appeal held that:

"the order must be complied with in totality, in all circumstances by the party concerned, subject to that party's right to challenge the order in issue in such a lawful way as the law permits. This may be by review, revision or by appeal."

I am satisfied that the order issued by the court on 26th July 2023 was known to the Respondents who intentionally breached it in part. The Respondents made no attempt to purge themselves of the contempt which is punishable or to have the Order set aside as the Law provides.

The Respondents are jointly liable for the contempt and shall deposit in court a fine of Uganda Shillings 10,000,000/= within ten days from the date of this Ruling failure of which a term of imprisonment shall be imposed on the Respondents.

The Registrar is hereby directed to post the Ruling on the respective Counsel's addresses.

Moses Kazibwe Kawumi

Judge

9th January 2024

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