

UGANDA / JUDGMENT

Irumba v Asiimwe & 5 others

(Miscellaneous Application No. 53 of 2019) [2020] UGHC 40 (25 February 2020)

[2020] UGHC 40

COURT

High Court of Uganda

BEFORE

Gadenya, J

CASE / FILE NUMBER

Miscellaneous Application No. 53 of 2019

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT
MASINDI MISCELLANEOUS APPLICATION NO. 0053 OF 2019 IRUMBA RASHID
APPLICANT VERSUS ASIIMWE DENIS T/A
MAJIMOTO AUCTIONEERS ON BEHALF OF MEERA INVESTMENTS LTD & 5
OTHERS RESPONDENTS**

RULING BY GADENYA PAUL WOLIMBWA - JUDGE

The Applicant filed this application to hold the Respondents in contempt of court for wilfully disobeying a court stopping them from evicting the Applicant from the suit premises. The Order was made by Justice Albert Rugadya Atooki on 16th January 2019, in the knowledge that the Applicant was still in possession of the suit property. The record, however, shows that the Applicant was evicted from the suit premises on 19th December 2018 and a return of execution of the court order was filed in court the same day.

The irrefutable conclusion is that by the time the Applicant appeared and argued his application for contempt of court before Justice Rugadya, on the 16th of January 2019, he misled the Judge that he was in the suit property, whereas not. I am sure that if Justice Rugadya, had been appraised of the true position and status of the Applicant in the suit property, he would have not made an order directing the Respondents not to evict the Applicant from the house. The Respondents cannot therefore, be cited for contempt of court for violating a court order that was obtained by the Applicant after misleading or not presenting the correct facts in court.

Even if the order of Justice Rugadya, was perfect, the Applicant cannot establish a cause of action for contempt of court on an unserved court order. The Applicant never filed affidavits of service to verify and confirm that he served the Respondents. In contempt of court proceedings, the Respondents can only be held liable only when the Applicants establish that the Respondents had knowledge of the court order and wilfully disobeyed it. In **Jacob Zedekiah Ochino and Another vs. George Aura Okombo and Others Civil Appeal 36 of 1989** the Kenya Court of Appeal held that:

"no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally and endorsed

with notice informing him that if he disobeys the order he is liable to the process. Consequently, the Application for contempt of court has no merit and it is accordingly

Gadenya Paul Wolimbwa JUDGE

25/2/2020

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Ruling read on 25/2/2020 in the absence of the parties. Mr. Olinga Court Clerk present. Ruling to be served by court on parties.

Gadenya Paul Wolimbwa

JUDGE 25/2/2020

Gadenya Paul Wolimbwa
Judge

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