

UGANDA / JUDGMENT

Jomayi Property Consult Limited v Bulamu and Others (Miscellaneous Application 180 of 2021) [2022] UGHCLD 292 (9 March 2022)

[2022] UGHCLD 292

COURT

HC: Land Division (Uganda)

BEFORE

Ojok, J

CASE / FILE NUMBER

Miscellaneous Application 180 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS APPLICATION NO. 180 OF 2021 (Arising from High Court Civil Suit
NO. 057 of 2017)

JOMAYI PROPERTY CONSULTANTS LIMITED ::::::::::::::::::::::::::::::::::

VERSUS

1. BULAMU VICTORIA
2. MARIA MUGWANYA
3. DDEGEYA JOHN KYOBE \$10\$

4. MARY NAKAYIZA

5. COMMISSIONER LAND REGISTRATION::::::::::::::::::::::::::::::::::::

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

RULING

The Applicant brought this application under Order 41 Rule 2(3) of the Civil Procedure Rules SI 71-1, Section 33 of the Judicature Act Cap 13 and Section 98 of the Civil Procedure Act Cap 71 against the Respondents for the following orders:

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- 1. A declaration that the Respondents are in contempt of the Decree and order of court in HCCS No. 57 of 2017, M. A No. 91 of 2019 and M. A No. 92 of 2019 all entered by this court.
- 2. A declaration that the decree/Judgment and/or Orders of Court in HCCS No. 057 of 2017 still subsist and are binding upon the parties and the suit property until hearing and determination of Civil Appeal No. 237 Of 2019 pending before the Court of Appeal.
- 3. An order that the restitution of Mawokota Block 60 Plot 15 land at Naluwanyi and the subsequent subdivision(s) thereof, creation of titles therefrom, transfers and registrations upon the new special Title register is illegal, null and void.
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- 4. A declaration that all the certificates of title recently created and curved out of Mawokota Block 60 Plot 15 by the Respondents in favor of the third parties are illegal, null and void.
- 5. An order for cancellation of all the Certificates of Title comprised in Mawokota Block 60 Plots 2048, 2049, 2050, 2051, 2052, 2053, 2054 land at Naluwanyi and restitution of the Applicant's possession and ownership of former Mawokota Block 60 and plots 45,46,47, & 49 pursuant to the Decree and Orders of Court in HCCS No. 57 of 2017.
- 6. An Order that the Respondents be punished by detention in Civil prison for knowingly disobeying and acting in contempt of the Orders and Decree of Court in HCCS No. 057 of 2017.
- 7. An order that the Respondents pay exemplary/punitive damages or compensation to the applicant in a sum of Ugx 500,000,000 (Five Hundred Million Shillings) and further be fined to pay a sum of Ugx 500,000,000 (Five Hundred Million Shillings) for contempt of Court orders.

The Application is supported by an affidavit sworn by Joseph Yiga Magandazi, the Managing Director of the Applicant and is premised on the following grounds;

- 1. That vide High Court Civil Suit No. 057 of 2017 filed in this Court, the 1st Respondent Bulamu Victoria, Musiitwa Leonard and Nalukenge Juliet (now deceased) sued the applicant and her codefendants for a declaration that Plots 16,23,24,25,26 and plots 45,46, and 49, all subdivided out of Block 60 Plot 15 and sold to the applicant belonged to the estate of the late Benwa Kisalita.
- 2. That in a judgment of this court dated 15/5/2017 delivered in Civil Suit No. 057 of 2017, and a decree dated 19.06.2019, the applicant's purchase, occupation and utilization of part of the property comprised in former Mawokota Block 60 plot 15 and subdivided into Block 60 plots 45, 46 and 49 land at Naluwani from the then administrator of the estate of the late Benwa Kisalita was validated and the applicant declared a bonafide purchaser of the suit land.

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3. That being dissatisfied with the above decree and orders of this court, the 1st respondent and her co-plaintiffs commenced a process of appeal against the decision and judgment of court in the Court of Appeal vide Civil Appeal No. 237 of 2019.
4. That subsequently, the 1st respondent and her co-applicants vide
 - M. A No. 91 of 2019 and M. A No. 92 of 2019 sought to stay execution of the orders and judgment of court in HCCS No. 057 of 2017 pending the hearing and determination of the pending appeal before the Court of Appeal.
 - 5. That to date the Appeal filed in the contest of the decree and orders of this court in HCCS No. 057 Of 2017 is still pending and yet to be determined by the Court of Appeal.
 - 6. That the Orders and Decree in HCCS No. 57 of 2017 are fully within the knowledge of the Respondents as binding upon them and the suit property was meant to be protected until hearing and determination of the appeal against the directives and orders of this court in the suit.
 - 7. That with full knowledge of the Decree/ Orders of this court, the Respondents have wantonly caused cancellation of the created certificates of title, caused creation of a special Certificate of title for Mawokota Block 60, Plot 15 in the name of Benwa Kisalita and further caused subdivisions thereon into Mawokota Block 60, Plots 2048-2054 and transferred them in to third parties to permanently dispossess the applicant of his interests and rights in the property.
 - 8. That the 1st, 2nd, 3rd, & 4th Respondents vide a decree of Court in HCCS No. 197 of 2015 directing property comprised in Mawokota Block 60, plots 25 & 26 to revert to the estate of the Late Benwa Kisalita from the name of the Administrator Leonard Mugwanya, aware and in contempt of the orders and decree of this court in HCCS No. 057 of 2017 moved the 5th respondent to amend and cause cancellation of title and ownership in Mawokota Block 60, Plots 45, 46 and 49 land at Naluwani.
 - 9. That the Respondents have by themselves and through their agents and officials of the 5th Respondent knowingly frustrated the

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process of court in utter abuse of the orders and decree of court in HCCS No. 057 of 2017 and have subsequently disposed the applicant of its properties.

The application was opposed by an Affidavit in Reply sworn by the 1st Respondent, Bulamu Victoria wherein she deponed as follows;

That she and other co-plaintiffs filed civil Suit No. 057 Of 2017 seeking to challenge the transactions/ agreements made by Leonard Mugwanya selling plots 16, 23, 24, 25, 26, 46, and 49 to the Applicant without their knowledge and consent. That the trial judge validated the purchase

by the Applicant despite the existence of a Court judgment in Civil Suit No. 197 of 2015 from Family Division in which Court had revoked Letters of Administration held by Leonard Mugwanya on the said titles and the same be cancelled and order that the property reverts back to the estate of Benwa Kisalita.

That by the decree in Civil Suit No. 197 of 2015, the titles were rectified accordingly by the 5th respondent following the orders therein and the land register amended accordingly whereby plots 23, 24, 25, 26, 45, 46 & 49 Mawokota Block 60 at Naluwani which were still registered in Leonard Mugwanya's name were cancelled and Plot 15 reinstated into the name of Benwa Kisalita and pursuant to the same order, the 1st respondent and other administrators after applying for a special certificate of title got registered on the title to plot 15.

That as administrators to the estate, the 1st respondent and her coadministrators sub-divided and distributed plot 15 into several portions of land which they distributed to other beneficiaries and other 3rd parties who are now registered proprietors of the several parties.

That the applicant had never been the registered proprietor of the suit land as at the time of obtaining judgment in Civil Suit No. 57 of 2017. And she should have obtained consequential reliefs if she wanted; or applied for review of the decree in Civil Suit No. 197 of 2015 but chose not to.

The 1st respondent denied being in contempt of any court order as the order which was passed in Civil Suit No. 197 of 2015 at High Court has

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been attempted to be set aside by Leonard Mugwanya which attempts were futile. The 1st respondent further agreed that she was aware that Civil Appeal No. 237 of 2019 was not redundant as its scheduling was completed in 2020 and the same is awaiting hearing to quash the judgment and decree issued by this court.

Representation:

M/S Byarugaba & Co. Advocates represented the applicant, while the respondent was represented by M/S Lubega & Co. Advocates.

Issues to be determined by Court:

- 1. Whether the Respondents are in Contempt of court?
- 2. Whether the Applicant is entitled to the reliefs and prayers sought?

Submissions:

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Both parties filed written submissions as directed by Court. Applicant's submissions:

In respect to the 1st issue, Counsel for the Applicant submitted and cited the case of Hon Sitenda Sebalu V The Secretary General East African Community Reference No. 8 of 2012 where Court define contempt of Court as; a civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act. Counsel further submitted with numerous authorities the principles that have been established for one to be found in contempt of court to include existence of a lawful order, potential contemnor's knowledge of the order and the failure to comply with the order that is disobedience of the order.

In respect to the 2nd issue on reliefs sought, counsel for the applicant submitted that the applicant prayed for declarations that the respondents be condemned for contempt of court and further that their actions in the arrogant affront to the rule of law be declared null and void. Counsel for the applicant further stated the different reliefs sought by the applicant to include cancellation of the certificate of titles

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created by the respondents, Ugx 500,000,000 as exemplary/ punitive damages, and Ugx 500,000,000 as a fine for contempt of the court orders.

Respondents' Submissions;

Counsel for the 1st respondent agreed to the issues raised by Counsel for the Applicant and stated that it was only the Respondent who filed an affidavit in reply and they donot have proof that the other Respondents were duly served with this application.

In response to the 1st issue raised by the Applicant, counsel for the Respondent submitted that contempt of court is premised on elements ≤ 10 of non-compliance and disobedience which are not existent in this particular application. That there was a court judgment in HCCS No. 197 of 2015 at Family division which cancelled all transactions on Plots 25 & 26 (formerly Plot 15) and reverted the title back in the name of the Administrators of the Estate of the late Benwa Kisalita.

That by the same decree, the Respondent went ahead to rectify the title into the name of the Administrators who included Juliet Nalukenge (now deceased), Maria Mugwanya and Ddegeya John Kyobe who rightfully applied for a special Certificate of title for plot 15 and registered it in the names of the Administrators, who then went ahead and distributed the estate and subdivided the land after creating other titles which have since passed on to other 3rd parties.

That the Applicant had never been registered on any title to the estate and at the time its transaction was declared valid in HCCS No. 57 of 2017, the court decree in HCCA No. 197 of 2015 had been issued and was under execution by the office of the 5th Respondent. The Applicant failed to obtain consequential reliefs and is now using this application to obtain the same through backdoor law. Counsel further submitted that the order in which the applicant

seeks court to exercise its powers is under challenge in Civil Appeal No. 237 of 2019 at Court of Appeal and consequently any complaint by the applicant ought to be raised in the Appellate court and not this court. That this application has other parties such as the 2nd, 3rd, 4th, & 5th defendant who were not parties in

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HCCS No. 57 of 2017 and could not have been aware of such any order arising therefrom.

Counsel for the 1st Respondent submitted that this application be dismissed with costs to the 1st respondent as the applicant is not entitled to the reliefs sought of cancelling the titles created without affording the persons in whose names the titles are a hearing. That this application is devoid of merit, speculative, frivolous and that it should be dismissed with costs.

Applicant's Submissions in Rejoinder;

Counsel for the applicant in rejoinder reiterated all the earlier ω submissions and stated that the 1st respondent has not in any way purged herself of the contemptuous conduct in abuse of the orders of this court. That the applicant is not seeking any consequential reliefs but rather seeking orders of court to deter perversion of justice and administration of justice.

Analysis of Court;

I have carefully read and considered the submissions by both counsel, the details of which are on court record and contents of which I have taken into account in addressing the two issues raised by the Applicant in this matter. I will determine the following issues in order of how they were raised;

Issue 1: Whether the Respondents are in Contempt of Court?

The law on contempt of court has been discussed in a number of authorities some of which have been cited by both Counsel. Contempt of court was defined by Hon Justice Kiryabwire J. A in the case of **Uganda Super League V Attorney General Constitutional Application No. 73 of 23** as conduct that defies the authority or dignity of court. Similarly, in the case of **Jack Erasmus Nsangiranabo V Col Kaka Bagyenda & Attorney General Misc. Application No. 671 of 2019**, my learned brother Justice Ssekaana Musa described contempt of court as any course of conduct which abuses and makes a mockery of the judicial process and

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which extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice.

The principles to establish in an application for contempt of Court have been laid down by the learned Justices of the East African Court of Justice in the case of Hon. Sitenda Sebalu V The Secretary General of The East African Community reference No. 8 of 2012, as cited by Counsel for the Applicant and they include; existence of a lawful order, potential contemnor's knowledge of the order and potential contemnor's failure to comply, that is disobedience of the order.

Both parties in their written submissions agreed that there was a subsisting decree/ judgment of this court delivered by my learned brother Hon. Justice Wilson Masalu Musene in HCCS No. 57 of 2017 in which he validated the purchase, ownership and utilization of the suit land by the Applicants who were the defendants in that suit. In the same vein the 1st Respondent in her submissions stated that there was another judgment/ decree from the Family Division given by my learned sister Hon. Lady Justice Kiggundu Jane wherein she revoked the Letters of Administration of a one Leonard Mugwanya and also decreed that the property reverts back to the estate of the Late Benwa Kisalita. This is the same order that the 1st and 5th Respondent relied on to change the Certificate of title on the suit land.

Basing on the above submissions, there are two conflicting decisions of two different Courts, one from this court in HCCS No. 57 of 2017 and another from the Family Division in HCCS No. 197 of 2015. The two Courts have the same powers, therefore it is my decision that the parties should wait for the determination of the appeal in the Court of Appeal in Civil Appeal No. 237 of 2019 which is the Court with higher powers superior to these two courts.

Counsel for the Respondents also submitted that, this application has other parties such as the 2nd, 3rd, 4th, & 5th defendant who weren't parties in HCCS No. 57 of 2017 and couldn't have been aware of such any order arising therefrom. I agree with this submission and find that 2nd, 3rd, 4th & 5th Respondents to this application are not in contempt of

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a court order issued by this court as the same were not parties to HCCS No. 57 of 2017 in which judgment was given by this Court.

Therefore, the Respondents cannot be found in contempt of the Court Order in HCCS No. 57 of 2017 as the same is on appeal pending hearing in the Court of Appeal vide Civil Appeal No. 237 of 2019. Basing on this, the parties should wait till the appeal is determined. The first issue is therefore answered in negative.

2. Whether the Applicant is entitled to the reliefs and prayers sought?

Counsel for the Applicant sought for a number of reliefs and prayers, but since the first issue has been answered in negative and the Respondents have not been found in contempt of any court order, the Applicant is not entitled to any reliefs and prayers sought. This issue is therefore also answered in negative.

I accordingly, I find that this application has no merit and cannot be maintained. I hereby disallow it, each party to bear its own costs. I so order.

Right of Appeal explained.

OYUKO ANTHONY OJOK JUDGE

09/03/2022

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