

UGANDA / JUDGMENT

Kajumba v Mwesige (Miscellaneous Application 13 of 2024) [2025]

UGHC 130 (28 February 2025)

[2025] UGHC 130

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

Miscellaneous Application 13 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 013 OF 2024

(ARISING FROM MISC. APPN No. 76 of 2022)

(ALL ARISING FROM HCT – 00 – CV – CS – LD 38 OF 2021 AND NO. 8 OF 2022)

KAJUMBA PROSCOVIA :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. MWESIGYE WILSON

2. NYASAIJA SOLOMON

3. FRED MUSHABE

4. ALEX AGABA

5. NINSIIMA ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

The applicant brought this application under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and order 41 rules 2(3) of the Civil Procedure Act for orders that:

1. A declaration that the respondents are jointly and severally in contempt of the Court Order in Misc. Application No. 76 of 2022 granted on the 30th day of August 2022.
2. That a temporary injunction order issued in Misc. Application No. 76 of 2022, restraining the Respondents, their representatives, agents, workmen, successors, children and or anyone deriving authority from the Respondents from trespassing, alienating, interfering, surveying, clearing, developing or disposing of the land comprised in Block 99 FRV 126, Folio 13, Plot 18, FRV 1260 Folio 10, Plot 19 FRV 1260 Folio 11, Plot 20 FRV 1260 Folio 12, Plot 22 FRV 1260 Folio 23 at Kajumbura, Kalwenyi, Kyaka County, Kyenjojo District now Kyegegwa District is still subsisting until the determination of the main suit, that is Civil Suit No. 38 of 2021 and 8 of 2022.
3. That the further activities of the Respondents cutting trees from the suit land to wit; mango trees, burning charcoal, splitting timber, selling the same and further trespass is illegal and in contempt of the said order.
4. That the Respondents be punished by detention in Civil Prison for a period of six (6) months for disobeying the aforesaid court order.
5. The Respondents be condemned to exemplary/punitive damages or compensation of the Applicant to the tune of Ugx 500,000,000/= (Five Hundred Million Shillings) for the destruction caused to the land.
6. The Respondent be condemned to a fine of Ugx 500,000,000/= (Five Hundred Million Shillings) for contempt of the Court Order.
7. That the costs of taking out the application be provided to the applicant.

Grounds of the Application:

The grounds in support of the applicant are contained in the affidavit in support of the application deposed by Twesige Rujwiga, a donee of powers of attorney for the applicant and he averred thus;

1. That the applicant is the plaintiff in civil suit No. 38 of 2021 while the 1st, 2nd and 3rd Respondents are the defendants and the said suit is in advanced stages of the hearing.
2. That on 30th August 2022, court in Misc. Application No. 76 of 2022 arising from Land Civil Suit No. 38 and 8 of 2022 granted a temporary injunction against the Respondents stopping them and their agents from further trespass on the suit land, alienating, sieving, clearing or developing the suit land comprised in Block 99 FRV 126, Folio 13, Plot 18, FRV 1260 Folio 10, Plot 19 FRV 1260 Folio 11, Plot 20 FRV 1260 Folio 12, Plot 22 FRV 1260 Folio 23 at Kajumbura, Kalwenyi, Para, Kyaka County, Kyenjojo District now Kyegegwa District pending the disposal of the two main suits.

3. That the order was served upon the Respondents. That in utter abuse of the order, the 1st, 2nd and 3rd Respondents connived with the 4th and 5th Respondents to have the applicant's trees on the disputed land cut down, split timber, burn charcoal and get wood and committing further trespass and altering the prevailing status quo.
4. That the Respondents and their agents have continuously encroached on the applicant's land thereby destroying the developments thereon and altering the status quo. That the illegal activities of the Respondent we reported to Kalwenyi Police Station under Ref: SD No. 10/3/2/2014 and a charge of disobedience of lawful orders was preferred.
5. That the applicant and their agents have full knowledge of the order and have opted to disobey the same which constitutes contempt of court. That unless the Respondents are arrested and condemned to damages, they will not desist or cease from their illegal activities which constitute contempt which is at the detriment of the applicant.

Reply of the Respondents:

The respondents opposed the application through the affidavits in reply deponed by Mwesige Wilson (1st Respondent), Nyaisaija (2nd Respondent) and Fred Mushabe (3rd Respondent) who deponed as follows;

1. That the application and supporting affidavit is full of lies and the allegations made therein are manifestly incorrect.
2. That the Respondents were not in contempt and there was no evidence provided by the applicant to prove that the 1st, 2nd and 3rd Respondent were conniving with the 4th and 5th Respondents.
3. That they had not engaged in any illegal activities and the pictures attached to the application do not place them to their participation in the activities complained of by the applicant and there is no activity which was done that constitute contempt.
4. . That the pictures attached do not show the specific part of the land where they were taken from and where the alleged activities took place. That contempt being personal liability, there is no evidence attaching liability to them.
5. That they had no knowledge of the complaint by the applicant at police since they were never summoned at police or investigated or prosecuted in the courts of law.
6. That the application does not meet the standard for contempt. That there is no evidence placing the Respondents as participants in the acts complained off and such she is merely on a fishing expedition.
7. That the applicant is using contempt to harass, intimidate them and stop them in participating in the pending civil suit before court. That the applicant ought to be dismissed and the applicant is ordered to pay 110,000,000/= as compensation for inconveniences the Respondents have been subjected to.

Issues:

1. Whether the Respondents actions amount to contempt of Court.
2. Remedies available to the parties.

Representation and Hearing:

Mr. Richard Rwakatooke of M/s Ngamije Law Consultants & Advocates appeared for the applicant and Mr. Ivan Kusiima of M/s Kyamuhangire Nyombi & Co. Advocates appeared for the Respondents. Both counsel filed written submissions which I have considered.

Consideration by Court:

The learned author of the **Black's law, 4th edition at page 390** defines contempt as a willful disregard or disobedience of a public authority. It is any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. It is committed by a person who does any act in willful contravention of court's authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given.

In **Hon Hon. Sitenda Sebalu Vs. The Secretary General of the East African Community, in Reference No. 8 of 2012,** the East African Court of Justice citing the authors of Halsbury's Laws of England, 4th Edition page 284 paragraph 458 described civil contempt thus: *"it is 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."*

The main import of the doctrine of contempt of court is to ensure that the orders of court are respected and to protect the sanctity of the institution that issues such orders by seeing to it that the orders issued are put into effect. This was elaborately brought out by Romer J in **Hadkinson v Hadkinson [1952] All ER,** where he relied on the case of **Church v Cremer (1 Coop Temp Cott 342)** where it was held thus; *"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"*. The doctrine is also hinged on the principle of law that the whole purpose of litigation as a process of judicial administration is lost if orders by court through the set judicial process, in the normal functioning of the courts are not complied with in full by those targeted and/or called upon to give due compliance. Further, it is not for that party to choose whether or not to comply with such order. (**See* *Housing Finance Bank Ltd & Another Vs. Edward Musisimisc. Appln No. 158 Of 2010)*.*

In addition to the above, orders of court must be complied with in totality in all circumstances by the party concerned, subject to the party's right to challenge the order in issue in such a lawful way as the law permits. It is the position of the law that to disobey an order of court or offer no explanation for non-compliance to the issuing court, at any party's choice or whims, on the basis that such an order is null or irregular, or is not acceptable or is not pleasant to the party

concerned is to commit contempt of court. (*See **Andrew Kilama Lajul Vs. Uganda Coffee Development Authority & 2others**, Misc. Application No. 324 of 2020).*

In our legal, constitutional and jurisprudential matrix, the doctrine of contempt is not provided for in any statutory legislation either principal or subsidiary. Recourse is therefore made to the common law and the doctrines of equity as far as possible. Therefore a review of case law on contempt is instructive as it offers in-depth guidance *(See **Court of Appeal Civil Appeal No. 190 of 2015, Jingo Livingstone Mukasa Vs. Hope Rwaguma** at page 13).*Therefore, courts in adjudication of contempt of court claims, reference is always made to the provisions of section 98 of the Civil Procedure Act Cap. 71 and Section 33 of the Judicature Act and the guidance from the different cases both in Uganda and from common law jurisdictions.

The East African Court of Justice in ***Hon. Sitenda Sebalu Vs. The Secretary General of the East African Community, in Reference No. 8 of 2012*** laid down the test or grounds which must be proved in order to succeed on an application for contempt thus:

“To prove contempt, the complainant must prove the four elements of contempt, namely:

1. ***Existence of a lawful order;***
2. ***The Potential Contemnor’s knowledge of the Order;***
3. ***The potential contemnors ability to comply;***
4. ***The potential contemnors failure to comply.”***

It also laid down the standard of proof where it was stated thus:

“The standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, and almost, but not exactly, beyond reasonable doubt. The jurisdiction to commit for contempt should be carefully exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor”.

1. **Existence of a lawful order:**

It was submitted by learned counsel for the applicant that court issued a temporary injunction issued by Court on 30/08/2022. The said order is attached as annexure B1 to the affidavit in support of the motion. This aspect as not contested by the learned counsel for the Respondents. I have considered the pleadings and the submissions of both counsel. ***Annexure B1*** is a temporary order of injunction issued by Assistant Registrar of this Court on the 30th day of August 2022 against the 1st, 2nd and 3rd Respondents and other people. It is not contested by learned counsel for the Respondents and the Respondents that the order exists. It is thus my view that the applicant proved this ground.

1. **Potential contemnors knowledge of the order:**

It was submitted by Mr. Rwakatooke that the Respondent had full knowledge of the order which is alleged to have been disobeyed. The Respondents on the other hand did not deny knowledge of the order but denied disobeying the same. I have carefully perused the record and found annexure B2 which is affidavit of service deposed by a one Aliija Bosco where he detailed the manner in which he served the Respondents' counsel with the order on the 2nd day of September 2022. I have also seen a copy where the respondent's Counsel acknowledged receipt of the same on 2nd September 2022 fully stamped by the stamp of Rwakafuuzi & Co. Advocates. It is trite law that service of any court process upon an advocate instructed to represent a given client is effective service upon such client. (*See *Kiggundu Vs. Kasuja* [1971] HCB 164 and *Lalji vs. Devji* [1962] EA 306; *UTC vs. Katongole* [1975] HCB 336).*

I am therefore satisfied that there was effective service of the injunction order dated 30th August 2022 upon the 1st, 2nd and 3rd Respondents who are the principal parties and are defendants in the main suit. There is no sufficient evidence that the 4th and 5th Respondents who are not parties in the main suit had knowledge of the order. Therefore, this ground is proved by the Applicant against 1st, 2nd and 3rd Respondents but not against the 4th and 5th Respondents.

1. The potential contemnors ability to comply:

Both counsel did not address court on this ground. However the Respondents' ability to comply with the orders issued by the Assistant Registrar is uncontested. The order was very clear as to what the 1st, 2nd and 3rd Respondent and their agents or assignees were prohibited from doing pending the determination of the main suit. I have not found anything in the order that could not be complied with by the Respondents. I will thus take it that the Respondent had the capacity to comply with the injunction issued by the Registrar on the 30th day of August 2022 and therefore this ground has been proved by the Applicant.

1. The potential contemnors failure to comply:

The biggest contestation regards the failure to comply with the order by the Respondents. The Applicant averred that the Respondents acted contrary to the dictates of the order to wit; they cut down mango trees, split timber and burnt charcoal and sold the same. The applicant attached pictures of the activities of the Respondents on the suit land and showed court the said activities when court visited locus in quo. I have observed that the other complaints that were raised in the application have a bearing on the merits of the main suit and will thus not be considered or resolved here.

The respondents on the other hand denied acting contrary to the order issued by court. They contended that the applicant did not point at the actions of each of the respondents which is contrary to the injunction issued. They also averred that the pictures attached do not indicate the land unto which the same were taken and do not show any of the respondents therein.

I must note that contempt is a personal offense. The disobedience of the order should be personal or individual and evidence must be presented against each individual and the acts or omissions that he or she did which was in disobedience of the order issued by Court. The

doctrine of common intention does not apply in Civil Contempt. The complainant in civil contempt bears the burden of proof under section 101 of the Evidence Act to lead evidence against each individual who is alleged to have acted in contravention of the order of court. The degree of proof is above the balance of probabilities but below proof beyond reasonable doubt. (See: ***Kajumba Proscovia v Sedrack Mwesige & 25 others, HCMA No. 094 of 2022***).

In the case before, the applicant alleges that the Respondents were cutting trees (mango trees) split timber and burnt charcoal from the remains. At locus visit for purposes of disposal of this application, Twesigye Rujwiga, an attorney for the applicant showed court the charcoal burning sites with remains of charcoal. Court was also showed 5 big stamps of old mango trees with some stems still lying on the ground. He also stated that it was Wilson Mwesige and others who were cutting the trees. Court was also showed a second charcoal burning site with remains of charcoal and 6 big stamps of old Mango trees with some stems still on ground and the 3rd charcoal burning site with 5 big tree stamps with other stems still on the ground. It was stated by the applicant's holder of power of attorney that the 1st Respondent was making and selling charcoal and 2nd Respondent was supporting those who were cultivating. That the 4th and 5th Respondents claim to have bought from the 1st and 2nd Respondents and he was cultivating the same.

In cross examination, Rujwiga stated that he had ever found the 1st, 2nd and 5th Respondents cutting the trees. That he did not take photos of them. That he took pictures of the activities on the land. That he did not photograph the participants. That he had no phone to photograph them. That he took pictures of the activities afterwards. That the 3rd Respondent supports the rest to contravene the order. That he is always with them when committing the acts complained off and does not stop them. That he was the L. C.1 chairperson. That he saw him present on the land while the other were carrying out the activities. That as the chairperson he should police the area and that when he reported, he told him those were police matters. That as a chairman, he failed to stop the activities. The witness said he later reported the matter to Karwenyi Police Post. That he had a reference but did not move with it. That the report was against the 1st, 2nd, 4th and 5th Respondents. That he reported the matter in February 2024 but did not recall the date. That he was aware those he reported were called at Police. The 4th and 5th Respondents claim to have bought the land from the 1st and 2nd Respondents. That he did not know when they bought. That the 4th and 5th Respondents were not parties to the main suit.

Mwesigye Wilson (1st Respondent) stated that the 4th Respondent was his friend. That he (Mwesigye) cut the trees on the suit land on the instructions of the 4th Respondent since he said the trees were destroying his gardens. In cross examination he stated that the order affected different pieces of land and not the one in dispute. That he knew about the order and he was told by his lawyer that it was in respect of other pieces of land. That he claims interest in Plot 19 and 23.

The plaintiff in the main suit sought a declaration that the defendants are trespassers and in illegal use of the suit land comprised in BLOCK 99 FRV 1260 Folio 13 **Plot 18**; FRV 1260 Folio 10 **Plot 19**; FRV 1260 Folio 11 **Plot 20**; FRV 1260 Folio 12 **Plot 22**; FRV 1260 Folio 104 **Plot 23**, at

Kajumbura, Karwenyi, Mpara, Kyaka County, Kyejono District, present day Kyegegwa District. Mwesigye Wilson (1st Respondent's) claim that that he knew about the order and he was told by his lawyer that it was in respect of other pieces of land. while he claims interest in Plot 19 and 23 cannot stand. The order included Plot 19 and 23.

The complaints by the applicant as regards disobedience of the order are multifaceted. The first claim was that the Respondents cut mango trees, split them for timber and burnt charcoal which was in contravention of the temporary injunction. In evidence of the applicant's attorney, he stated that the alleged activities took place in February 2024 in disobedience of the injunction. However, the photos attached to the application as annexure C indicated that they were taken on 28th January 2024. This inconsistency in dates is insignificant because Mwesigye Wilson(1st Respondent) accepted that he was the one that cut the trees on the suit land.

It was stated by the applicant's holder of power of attorney that the 1st Respondent was making and selling charcoal and the 1st respondent accepted cutting down the trees. The evidence sufficiently implicates the 1st respondent. The only evidence against the rest of the respondents is that the 2nd Respondent was supporting those who were cultivating. That the 4th and 5th Respondents claim to have bought from the 1st and 2nd Respondents and he was cultivating the same. There is insufficient evidence implicating the other respondents in the tree cutting and the follow up activities.

It is my finding that the 1st respondent acted contrary to the temporary injunction order issued in Misc. Application No. 76 of 2022 in that he interfered with and cleared the suit land by cutting the trees on the suit land, splitting timber and selling, and using the trees to burn and sell charcoal. The said activities were illegal and in contempt of the said order. The application to that extent succeeds against the 1st respondent. It is my finding that the applicant failed to prove that the 2nd, 3rd, 4th and 5th respondents participated therein, and the application thus fails in that respect.

Remedies

The applicant sought the following remedies:

1. That the Respondents be punished by detention in Civil Prison for a period of six (6) months for disobeying the aforesaid court order.
2. The Respondents be condemned to exemplary/punitive damages or compensation of the Applicant to the tune of Ugx 500,000,000/= (Five Hundred Million Shillings) for the destruction caused to the land.
3. The Respondent be condemned to a fine of Ugx 500,000,000/= (Five Hundred Million Shillings) for contempt of the Court Order.
4. That the costs of taking out the application be provided to the applicant.

Having found the respondent in contempt of court order, court must determine whether the respondent should be detained in civil prison. Imprisonment for civil contempt is properly ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance was mandatory in character. A party in contempt stands to be committed until he complies with the order (***Re Contempt of Dougherty 429, Michigan 81, 97, (1987)***). In this case the order is not of a nature requiring future compliance, so as to justify imprisonment until compliance, but rather, continuous compliance by refraining from certain acts. In addition, the main suit before court is ongoing and requiring the respondent to serve time in a civil prison though possible may not positively facilitate the case adjudication process. The respondent for that reason shall not be committed to civil prison.

The purpose of contempt as a principle is to preserve the effectiveness and sanctity of court orders and non-compliance must be punished and so in this case, court shall consider the monetary remedies sought by the applicants. In ***El Termewy v Awdi & 3 Ors (C. S 95/2012) [2015] UGHCCD 4***, Justice Elizabeth Musoke cited the case of ***Obongo v Municipal Council of Kisumu [1971] EA* 91** where court noted that; ***“... a court if making a general award, may take into account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff . . . Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. On the other hand exemplary damages are completely outside the field of compensation . . . and their object is entirely punitive. Punitive damages are meant to punish, deter, express outrage of court at the defendant’s egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct.”**

* In the instant case, the 1st respondent’s acts of cutting very old trees that appeared to have existed for decades, making and selling timber out of them, as well as burning and selling charcoal, contrary to the court injunction, amounted to egregious and arrogant conduct. I find that in the instant case, the tree cutting, charcoal burning, and timber making, were calculated moves to profit the 1st respondent himself possibly to the applicant’s detriment before the main suit is finally determined.

The applicants prayed for exemplary damages or compensation of UGX 500,000,000 (Five hundred million Uganda shillings) and a fine of UGX 500,000,000 (Five hundred million Uganda shillings) as well as costs. Regarding the applicant’s prayer for exemplary/punitive damages or compensation of the Applicant for the destruction caused to the suit land, I am alive to the related remedies sought in the main suit that include the following:

1. An order for cancellation and nullification of any dealings and transactions relating to the suit land illicitly carried out by the defendants and amongst themselves and any other third party if any.
2. An order for payment of general damages for inconvenience, destruction, hardships and denial of the plaintiff’s quiet possession, development and enjoyment of the suit land.

3. An order for payment of special damages as compensation for the destruction and injury caused by the defendants unto the plaintiff's forests, crops and barbed wire, uprooting of boundary mark stones and related boundary trees, and lost income by way of license and hire of the suit land to seasonal cultivators.
4. An order for payment of mesne profits resulting from the defendants' illicit use and cultivation of the suit land.

The above remedies are pegged on the pending resolution of the issue in the main suit as to whether the defendants (who include the 1st respondent herein) are trespassers on the suit land, which the defendants contest, arguing that they have a claim of right over the suit land as purchasers. I therefore find it premature in the context of this case, to pronounce myself on any damages or compensation at this stage.

I find this a proper case where the 1st respondent should be penalized for contempt of the Court Order in Misc. Application No. 76 of 2022 granted on the 30th day of August 2022. The applicants prayed for a fine of UGX 500,000,000 (Five hundred million Uganda shillings) which I find excessive. The sum of UGX 20,000,000/= is awarded against the 1st respondent as a penalty for contempt of court order.

In summary the application is allowed as against the 1st respondent and I make the following orders:

1. **The 1st respondent is in contempt of the Court Order in Misc. Application No. 76 of 2022 granted on the 30th day of August 2022.**
2. **The temporary injunction issued in Misc. Application No. 76 of 2022 on the 30th day of August 2022 is still subsisting until the determination of the main suit, that is Civil Suit No. 38 of 2021 and 8 of 2022.**
3. **The sum of UGX 20,000,000/= is awarded against the 1st respondent as a penalty for contempt of court orders in Misc. Application No. 76 of 2022 and shall be deposited in this court within one month from date of delivery of this ruling.**
4. **The 1st respondent shall bear the costs of this application.**

It is so ordered.

Dated at Fort Portal this 28th day of February 2025

Vincent Wagona

High Court Judge

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