

**Kamau v Zukas and Others (Miscellaneous
Application No. 291 of 2021) [2022]
UGHCCD 235 (31 October 2022)**
[2022] UGHCCD 235

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- 1. ALAN. L. ZUKAS
- 2. BENARD B. KAUNDA
- 3. NKURUNZIZA ISSA ::::::::::::::::::::::::::::::::::::::RESPONDENTS
- 4. SEBATAGITA EPHREM
- 5. AFRICAN FINE COFFEES ASSOCIATION LIMITED

BEFORE: HON. JUSTICE SSEKAANA MUSA**RULING**

The applicant brought this application against the respondents under section 98 of the Civil Procedure Act and Order 52, Rule 1 and 2 of the Civil Procedure Act seeking for orders that;

- 1. The actions of the respondents and decisions effected during the subsistence of the order of court interfered with the management and corporate affairs of African Fine Coffees Association Limited amount to contempt of court.
- 2. The respondents be condemned for their acts of contempt and accordingly be ordered to pay general damages.
- 3. The Registrar of companies recalls and cancels all the board resolutions which were passed by the respondents while the order of court was still subsisting.
- 4. Costs of the application be provided for.

The application was supported by the affidavit of Samuel N. Kamau, the applicant in the case with grounds that briefly stated that;

- a) The applicant filed a petition for protection of members and the company against prejudicial conduct by unscrupulous persons vide High Court Company Cause No. 2 of 2021.
- b) The applicant equally filed an application for temporary injunction of court vide Misc. Applic. No. 29 of 2021 and the same is pending hearing before court.
- c) In order to maintain the status quo and to safe guard the application and main suit from being rendered nugatory, the applicant filed an application for an interim order of injunction and this order was granted by this Honorable court on 25th of January, 2021 in the presence of counsel for all parties.
- d) In total disregard of the orders of court, the respondents interfered with the management and co-operate affairs of African Fine Coffees Association Limited by constituting themselves into a board of directors, making resolutions, filing the same at URSB and serving them on to numerous banking institutions.
- e) The respondents have similarly decided to suspend the petitioner who is the applicant in Misc. Applic. No. 29 of 2021, Misc. Applic. No. 30 of 2021 and the Petitioner in Petition No. 1 of 2021. The respondents have equally suspended the chief operating officer and the chief finance and administrative officer of the company.
- f) All of these actions have been done in total disregard of the interim order of injunction issues by court.
- g) The conduct of the respondents' amounts to contempt of court, prejudices the applicant and renders all of the suits that are before court nugatory.

- h) These actions are aimed at undermining court and the established procedures of protecting a company, frustrating court process and the ends of justice.

The respondents through the affidavit in reply of Kafeero Alexander to the application denied that the applicant's averments and stated briefly that;

- a) They intended to raise a preliminary objection that;
- i) The applicant instituted an application out of a petition with different parties altogether and can thus not be sustained without a main suit of its own.
- ii) The applicant has no cause of action against the respondents seeing as the court order he refers to was issued against four individuals who are not party to the application and the said court order did not in any way interfere with the mandate of the rest of the board of the AFCA and to that end, the respondents are not in contempt of the said court order.
- b) The applicant ceased being a board secretary by virtue of the board resolution dated 25th October 2020 and registered on the 25th day of November, 2020 by the Registrar of companies.
- c) The respondent contended that the board of directors is legally in office following an ordinary resolution wherein they were appointed to the office and registered with the company registry.

The application came up for hearing before this court and the parties were ordered to file their submissions respectively in the interest of time which I have had the occasion of reading and consider in the determination of this application.

Three issues were framed by the applicant for court's determination;

1. Whether the respondents' actions amount to contempt of court order?

2. Whether the respondents are contemnors?

The applicant was represented by *Mr. Collin Masiga and Mr. John Patrick Barenzi* whereas the respondents were represented by *Mr. Sseninde Saad and Ms. Stella Twikiriza.*

Determination

The applicant's counsel submitted Article 28 (12) of the Constitution makes contempt of court an offence that is punishable by court although it does not have a prescribed punishment. He stated that section 98 of the Civil Procedure Act provides for the inherent powers of court to make orders that are necessary either for the ends of justice or to prevent the abuse of court process. While relying on *Stanbic Bank (U) Ltd & Anor vs The Commissioner General, URA M. A No. 42 of 2010,* court defined contempt of court as constituting of refusing to obey an order of court.

From this decision, counsel deduced that the contempt of court includes; disobedience of court orders, doing acts or using words that impede or interfere with the administration of justice, doing acts or using words which create substantial risk of impeding the course of justice or that lead to prejudice and contempt of court procedure. He further submitted that court orders are mandatory and ought to be followed.

Counsel submitted that the respondents actuated all the ingredients of contempt by disobeying the court order by doing acts that go against it as seen in paragraph 11 of the affidavit in support when they met, passed resolutions and registered them. These resolutions change the accounts signatories and appointed a chairperson. The following actions amount to interference with the management and corporate affairs of the AFCA and amount to the taking over and controlling of its affairs.

Counsel therefore submitted that the actions of the respondents impede the process of court and are interfering with the administration of justice sought by the applicant which squarely amounts to contempt. The applicant therefore prayed that this court finds the actions and conduct of the respondents contemptuous.

In respect of paragraph 4, 10, 17 of the respondent's affidavit in reply, the applicant submitted that contempt relates to any person that disobeys the order of court or impedes court process and that their actions relate to AFCA which is the centre of the matters before court. Counsel submitted that the respondents knew about the order thereby undermining the court order.

In response, the respondents submitted that the applicant presupposes that the respondents are agents and representatives of the respondents he sued in Petition Cause No. 2 of 2021 who are not parties to this application. The respondents submitted that the directors are agents are agents/ representatives of AFCA. Counsel therefore submitted that the said court order for the injunction sought to restrain Mr. Amir Hamza, Mr. Karugu Macharia, Mr. Kenneth Barigye and Mr. Gizart Worku Kebede and their agents/ representatives and that the 1-4 th respondents herein who are directors of the board of the 5th respondent are not agents / representatives of the four individuals named in the order.

Counsel for the respondents relied on *Uganda Super League vs Attorney General Const. Applic. No. 73 of 2013* to defined contempt of court as conduct that defies the authority or dignity of court. he noted that it is requirement to all proceedings for contempt of court that there was a clear and unambiguous court order. the order must state clearly ad unequivocally what should and should not be done. He noted that in the instant case, the material part of the order allegedly violated by the respondents states that; an injunction is issued restraining the respondents or their agents and representatives from interfering with the management or corporate affairs of African Fine Coffees Association Limited and from taking over and controlling its affairs until the final disposal of the main application and; an injunction is issued restraining the respondents or their agents and representatives from subjecting the applicant to disciplinary proceedings until the final disposal of the main application.

Counsel therefore noted that the import of the order is restrain the respondents that is; Mr. Amir Hamza, Mr. Karugu Macharia, Mr. Kenneth Barigye and Mr. Gizart Worku Kebede and their agents/ representatives from interfering with the management or corporate affairs of the 5th Respondent from taking over and controlling its affairs and from subjecting the applicant to disciplinary proceedings until the final disposal of the main application. He therefore submitted that the respondents herein are not agents/ representatives of the fur directors mentioned in the order and not all the directors or activity in AFCA.

Counsel submitted that the order does not bar the 1st-4 th respondent from executing their duties as directors of the 5th Respondent. The respondents submitted that the orders sought by the applicant are misguided and untenable in law since the court orders were very clear on whom they were issued against and restrained, who are not the respondents in this instant application. Counsel therefore submitted that the applicant is not entitled to the damages he seeks and prayed that this application is dismissed with costs to the respondents.

Analysis

The **Black's Law Dictionary** (*Ninth Edition*) defines contempt of court as:

"*Conduct that defies the authority or dignity of a court because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment*."

The Employment and Labour Relations Court of Kenya at Kericho extensively discussed the contempt of court in the matter of *Collins Odumba [2016] eKLR*, where court held that:

"*The law and practice on contempt of court has come out clearly that the essence of contempt proceedings is not to assuage the feelings of the judge or install the dignity of the court. Far from this, it is intended to safeguard the supremacy of the law. In the authority of Johnson vs Grant, 1923 SC 789 at 790 Lord President Clyde stated that;*

"*...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.*"

The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and

safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

In the case of **Kenya Tea Growers Association v Francis Atwoli and 5 Ors [2012] eKLR,** Lenaola J cited with approval the case of **Clarke and Others v Chadburn & Others [1985] 1All E. R (PC), 211** in which the court observed that;

"*I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal.... even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it*."

This clearly illustrates why courts will not sit and watch in the wake of contempt of court. Disobedience of court orders and or summons would in total disparage the rule of law and lead to anarchy. This would be too much for any of us to await and face. Judges and judicial officers may risk being accused or seen to defend their lofty positions in this exercise, but this would be worth every coin bearing in mind the possible alternatives.

Any contempt of court is unconstitutional and is thus criminal in nature/character and ought to be punished as such. There is an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity. **See: **Attorney General vs Times Newspapers Ltd* [1974] AC 273 at 308A***

In the instant case, it is indeed true that the applicant filed a petition for protection of members and the company against the prejudicial conduct of other members vide Company Petition Cause No. 2 of 2021. Thereunder, the applicant filed an application for temporary and interim orders vide Misc. Applic. No. 29 of 2021 and Misc. Applic. No. 30 of 2021 respectively. The latter was heard and the court made a ruling to the effect an interim order preventing the respondents; Mr. Amir Hamza, Mr. Karugu Macharia, Mr. Kenneth Barighe and Mr. Gizat Worku Kebede, their agents and representatives from interfering with the management or corporate affairs of African Fine Coffees Limited and from taking and controlling the affairs of the company until the final determination of main application. The court further issued an injunction restraining the respondents, their agents and representatives from subjecting the applicant to disciplinary proceedings until the disposal of the main application.

From the above orders, it is very clear that the said were made in respect of Mr. Amir Hamza, Mr. Karugu Macharia, Mr. Kenneth Barighe and Mr. Gizat Worku Kebede and their agents/representatives. The orders therein were specific as to the persons involved and cannot be said to 'in rem' but in 'personam'.

Whereas a "judgement in rem" is a kind of declaration about the status of a person and is effective to the entire world whether he was a party or not, this is not the case with a judgement in personam. A judgement in rem determines the status or condition of property which operates directly on the property itself and is therefore refers to actions determining the title of property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. A "judgement in personam" is when a judgment is given to the parties to which it only binds and is not relevant in any subsequent case. It is distinguished from a judgement against a thing, rights or status and it's to the actions determining the rights and interest of the parties themselves in the subject matter of the case.

Be as it is may, it is sufficing to note that the respondents herein are not agents and representatives of the respondents involved in Misc. Applic. No. 30 of 2021 but of the 5th Respondent; Africa Fine Coffees Association Limited whose mandate is to act for and on its behalf under the company's Memorandum and Articles of Association.

I am therefore inclined to agree with the submissions of counsel for the respondents that the respondents herein have nothing to do with the court order in Misc. Applic No. 30 of 2021 and are therefore not barred from performing their duties as directors of the 5th respondent herein. It is also important to note that directors represent the directing mind and will of the company, and control what they do. In the case of *HL Bolton Co vs TJ Graham and Sons* [1956] 3 All ER 624, Lord Denning held at page 630;*

*"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such.... That is made clear in Lord Haldane's speech in *Lennard's Carrying Co Ltd vs Asiatic Petroleum Co Ltd* ([1915] AC 705 at pp 713, 714*.

From the evidence on record, it can be seen that whatever was done by the respondents herein was well within their duty as directors of the company and it was done without any contempt of court order as against them.

I therefore find that the respondents are not in contempt of the court order issued vide Misc. Application No. 30; Samuel Kamau vs Mr. Amir Hamza & 3 Ors since they are not the parties therein nor agents/ representatives of the respondents being restrained to perform their duties by court under the said order.

For this reason, I find that the applicant is not entitled to any orders sought under this application. In the result for the reasons stated herein above this application fails and is dismissed with costs.

I so order.

SSEKAANA MUSA JUDGE 31st October 2022

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