

UGANDA / JUDGMENT

Musoke Tadeo and Musisi Mwanje Joseph v Robert Migadde and Atim Evelyn (Miscellaneous Application 994 of 2023) [2025] UGHCFD 48 (8 May 2025)

[2025] UGHCFD 48

COURT

HC: Family Division (Uganda)

BEFORE

Keitirima, J

CASE / FILE NUMBER

Miscellaneous Application 994 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (FAMILY DIVISION)

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MISCELLANEOUS APPLICATION NO. 0994 OF 2023

(ARISING FROM CIVIL SUIT NO. 0044 OF 2014)

1. MUSOKE TADEO 2. MUSISI MWANJE JOSEPH APPLICANTS VERSUS

1. ROBERT MIGADDE 2. ATIM EVELYN

BEFORE HON. JUSTICE JOHN EUDES KEITIRIMA

RULING

1]. This is an application brought by way of Notice of Motion under Article 23(1) (a) of the Constitution, Section 98 of the CPA and Section 33 of the Judicature Act and Order 52 Rules 2 & 3 of the Civil Procedure Rules.

The applicants are seeking for orders that; -

The respondents be held in contempt of Court and committed \$(i)\$ to civil prison.

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- Punitive/exemplary damages and costs be imposed on them. \$(ii)\$
- Costs of the application be provided for. \$(iii)\$

2]. The application is supported by the affidavit of Musisi Mwanje Joseph hereinafter referred to as "the 2nd applicant" who states inter alia; -

- That the applicants being dissatisfied with the judgment and \$(i)\$ decree vide Civil Suit No. 44 of 2014 in the High Court-Family Division lodged a Notice of Appeal in this Court and filed a Memorandum of Appeal in the Court of Appeal and also filed their record of appeal.
- That the applicants were thereafter granted an order for stay of \$(ii)\$ execution of the orders vide Civil Suit No. 44 of 2014 vide M. A No. 1152 of 2022 which the respondents were aware of.
- That the said order of execution has never been vacated or set \$(iii)\$ aside.
- That the respondents descended upon the subject land and \$(iv)\$ started construction in total disregard of the order for stay of execution and without following due process.

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That in the interests of justice the application ought to be \$(v)\$ allowed.

3]. In his affidavit in reply Robert Migadde hereinafter referred to as the "1st respondent" stated inter alia; -

- That the suit land comprised in Kibuga Block 17 Plot 733 \$(i)\$ belonged to the late Fred Seruwu who inherited it from his father Israel Lubowa Musoke who also inherited it from the late Yoweri Musoke Mujagali.
- That he purchased 0.597 acres being the interest of the 1st, 2nd \$(ii)\$ and 3rd defendants who were beneficiaries of the late Fred Seruwu.
- That he took possession of his portion of the purchased land. (iii)
- That the applicants who were uncles of the 1st and 2nd \$(iv)\$ defendants challenged the sale and sued him vide Civil Suit No. 44 of 2014.
- That the applicants sought inter alia an order to evict him from \$(v)\$ the suit land.

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- That in a judgment dated 26th April 2022, the trial Judge \$(vi)\$ upheld the sale of the suit land to him.
- That the Court ordered the Administrator General to transfer \$(vii)\$ the respective portions of land to the parties.

- That the judgment of Court and order of stay did not evict him (viii) from the portion which he purchased and occupied way back from 2012-2013.
- That he has been advised by his lawyers that he has the right \$(ix)\$ to continue utilizing a portion of the suit land.
- That no transfer has been effected by the Administrator \$(x)\$ General.
- That the applicants have never been in possession of the suit \$(xi)\$ land which he purchased.
- That he has not graded the applicant's purported portion of the \$(xii)\$ suit land as alleged.
- That the applicants did not comply with the conditional stay in \$(xiii)\$ that they failed to deposit security for costs as ordered by Court.

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- That he built a wall fence to secure the portion of land which \$(xiv)\$ has always been in his possession.
- That the applicants conspired with Pastor Karugaba and Pastor \$(xv)\$ Dennis Kasirye to lodge a malicious case of trespass against him at Old Kampala Police Station claiming that he trespassed on land which the 2nd applicant had sold to the pastors.
- That the Police visited the suit land in the presence of all the \$(xvi)\$ parties on 18th May 2023.
- That at the locus in quo, the said pastors still insisted that they \$(xvii)\$ also purchased the suit land from the 2nd applicant but they refused to avail the sale agreements.
- That the police found out that the complaint of Pastor (xviii) Karugaba and Pastor Dennis Kasirye was baseless and the file was closed.
- That he continued building his fence. \$(xix)\$

4]. In her affidavit in reply Atim Evelyn hereinafter referred to as "the 2nd respondent" stated inter alia; -

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- That around June 2021, she was instructed by Seruwu Joan, \$(i)\$ Nakintu Irene Sekamanya and Edith Nanteza to represent them in Civil Suit 044 of 2014. The said suit was filed against them by the applicants.
- That her clients informed her that they and other children of \$(ii)\$ the late Fred Seruwu had sold their land to the 1st respondent in 2012. That they also provided her with all the land sale agreements.

- \$(iii)\$ That the suit land has a big residential house and a huge compound which is occupied by the \$1^{st}\$ respondent.
- That judgment was entered in favour of her clients. \$(iv)\$
- That in a surprising turn of events she was summoned on the \$(v)\$ \$17^{th}\$ day of May 2023 by the officer in charge Old Kampala Police Station to record a statement in regard to a land dispute in Rubaga Gomotoka Road.
- That at Old Kampala Police Station she met Pastor Karugaba \$(vi)\$ and Pastor Dennis Kasirye who also claimed to have

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purchased the suit land from the \$2^{nd}\$ applicant and claimed that the suit land belonged to them.

- That the said Pastors claimed that the \$1^{st}\$ respondent was \$(vii)\$ trespassing on the suit land by building a wall fence.
- That the police found out that the complaints of the said (viii) pastors were baseless and the file was closed.
- That this application is brought in bad faith and only meant to \$(ix)\$ harass and intimidate her by Counsel Rodgers Odyang of Okello Oryem & Co. Advocates.
- That she did not represent the \$1^{st}\$ respondent in Civil Suit No. \$(x)\$ \$44\$ of 2022 and M. A No. 1152 of 2023 as the \$1^{st}\$ respondent was represented by Nelson Nerima.
- That the application has no merit and should be dismissed with \$(xi)\$ costs.

5]. In her affidavit in rejoinder, Anena Samantha Okello stated inter alia;

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- \$(i)\$ That she was an Advocate of the High Court practicing with M/S Okello Oryem & Co. Advocates.
- \$(ii)\$ That the suit land has been in possession of the Latter Glory Ministries Church led by Pastor Kasirye, a tenant Nanteza Edith, Nalubowa Joan and Nakintu Irene.
- That the applicants did not fail to comply with the conditional \$(iii)\$ leave for stay of execution but took several steps to ensure that the security for the due performance of the decree was deposited in Court as shown hereunder; -
- That the applicants' lawyers wrote to Court seeking \$(a)\$ guidance on how the said money should be paid on behalf of the applicants.

- That they did not receive any correspondence from the \$(b)\$ Court until they followed up on the 30th May 2023.
- That they sought the guidance of this Court on how and \$(c)\$ where the money should be paid.
- That at the time of following up, they had already \$(d)\$ commenced the process of making payment through a

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bank guarantee but wanted to get the beneficiary's account name and number.

- That the Court allowed them to make the payment and \$(e)\$ referred them to the Court cashier for the bank account and name.
- That on 30th May 2023 the Court cashier provided them \$(f)\$ with the bank account name and number and advised them to deposit the cash.
- That they started the process of reversing the bank \$(g)\$ guarantee and on the 12th day of June they went with the security of fifty million shillings \$(50,000,000/=)\$ cash to the Bank of Uganda to deposit the same.
- That at the Bank of Uganda an official at the front desk \$(h)\$ informed them that they do not accept cash deposits but only EFT.
- That on 21st June, 2021 they reinstructed their bankers to \$(i)\$ make the EFT which instruction was successfully

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processed on 24th June 2023 and payment effected thereto.

- That the applicants have been desirous, willing and always \$(iv)\$ endeavoring to furnish security and eventually did even though they were delayed by the formalities in making such payment.
- That the order for stay of execution vide M. A No. 1152 of \$(v)\$ 2022 stayed all forms of execution upon the land which includes any construction.
- That the said order has never been vacated, or set aside by this \$(vi)\$ Court.
- That despite the said order, the respondents personally \$(vii)\$ superintended the destruction of the disputed property, illegal constructions thereon of a perimeter wall and building using goons, lumpens and rogue police men.
- That the actions of the respondents by constructing and \$(viii)\$ descending upon the suit land amount to contempt of Court.

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The applicants and respondents filed written submissions the details of which are on record and which I have considered in determining this application.

6]. The issues to determine now are; -

- Whether the respondents are in contempt of Court. \$(i)\$
- Whether the applicants are entitled to the remedies sought. \$(ii)\$

I will resolve both issues concurrently.

7]. It was held in the case of *Hon. Sitenda Sebalu versus Secretary* General of the East African Community Ref. No. 8 of 2012 that to prove contempt of Court the following conditions must be in place; -

- Existence of a lawful order; \$(i)\$
- The potential contemnor's knowledge of the order; \$(ii)\$
- The potential contemnor's ability to comply with the (iii) order;
- potential contemnor's failure to comply i.e \$(iv)\$ The disobedience of the order.

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friend.

8]. In this case, this Court issued an order vide M. A 1152 of 2022 arising from Civil Suit No. 0044 of 2014 involving the parties herein. The order was issued on the 31st March 2023 wherein this Court granted a stay of execution in the judgment vide Civil Suit No. 44 of 2014 on condition that the applicants furnish security for due performance of the decree of fifty million shillings \$(50,000,000/=)\$ by either cash or bank guarantee.

9]. The said security for the due performance of the decree was to be deposited in Court within a period of thirty days from the date of the ruling but in any case not later than the 2nd May 2023.

10]. The applicants never deposited the said amount in the timeframe that was given by Court and in the affidavit of Anena Samantha Okello this money was deposited on 24th June 2024 which was over one month and a half of the deadline that had been given.

11]. The applicants should have formally sought leave of Court to extend the time they were to deposit the security for costs which they never did. The order for stay of execution therefore lapsed when the condition that was given was not met during the given time frame.

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12]. An order of Court cannot be administratively varied as the applicants seem to imply when they claim they sought administrative intervention on how the security for due performance of the decree could be deposited. If the applicants had acted in good faith they should have sought clarification on how the security for costs could be deposited in Court from the time the ruling was made.

13]. The applicants wrote a letter on the last day they were expected to have paid the security and still did not deposit the said amount on that day. There was therefore no order for stay of execution that could be used as a basis for this application. The order for stay of execution had since lapsed for failure to deposit security within the time that had been prescribed by Court.

The application will therefore be dismissed with costs to the respondents.

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Hon. Justice John Eudes Keitirima.

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