

UGANDA / JUDGMENT

Musoke v Sentambule (Miscellaneous Application No. 1052 of 2018) [2023] UGHCLD 119 (25 April 2023)

[2023] UGHCLD 119

COURT

HC: Land Division (Uganda)

BEFORE

Nyanzi, J

CASE / FILE NUMBER

Miscellaneous Application No. 1052 of 2018

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA (LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 1052 OF 2018 (ARISING FROM
MISCELLANEOUS APPLICATION NO. 093 OF 2015) (ARISING FROM CIVIL APPEAL
NO. 2016 OF 2016) JANE

MUSOKE : : : : : APPLICANT
VERSUS

SENTAMBULE PAUL : : : : : RESPONDENT

BEFORE: HON. JUSTICE NYANZI YASIN RULING

- 1. The applicant brought this application under Section 14 and 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act and Order 52 Rules I and 2 of the Civil Procedure Rules for the following prayers;
- i. A declaration that the respondent's actions are in contempt of the court order, issued vide High Court Miscellaneous Application No. 093 of 2015 dated 21st April 2016
- ii. An order of this honourable court to vacate the said court order
- iii. An order against the respondent to pay damages and fine for the contempt
- iv. An order committing the respondent to prison for contempt of the said court order and costs of the application.

2. Back ground

The background of this application is that the applicant in the instant application sued the respondent under Civil Suit No. 204 of 2009 at Nakawa Chief Magistrate Court for trespass and it was found in favor of the applicant. The respondent then appealed against the decision of the Chief Magistrate Court under Civil Appeal No. 1 18 of 201 1 and the appeal was dismissed for want of prosecution. The respondent again filed a second appeal in the Court of Appeal against the decision of the High Court. However, upon institution of the second appeal, the respondent also applied for the stay of execution in the High Court under Miscellaneous Application No. 193 of 2015 and it was granted.

3. The findings of the stay of execution which is the basis of this application are as follows;

"In the instant case the applicant state in his supporting affidavit that substantial loss is likely to occur to him if execution proceeds against him. And that it will be very difficult to recover back his land since he is the one in possession and that the appeal will be rendered nugatory.

Emphasis was that an application for stay of execution ought to be granted so as not to render the appeal nugatory if successful. This is particularly given in the circumstances that the method of execution in this case is to demolish the subject matter of the suit which would cause damage and loss.

The status quo would rather be maintained as the parties expedite the appeal. So not wishing to go into the merits of the appeal at this stage and since the Applicant is said to be currently residing on the disputed land where he carries out farming activities, then I find and hold that this is ^a fit and proper situation where stay of execution should be granted. The application is accordingly allowed. Costs in the cause."

- 4. This application is supported by the affidavit of the applicant were she averred as follows;
- i. That the status quo as per the ruling was to maintain the respondent's farming activities on the suit land and his stay thereon. However, of recent while she was passing by the suit land, she noticed that the

Respondent, either directly or through his agents or accomplices, has gone ahead to construct buildings on the suit land in utter disregard of the court order. She added that the Respondent has allowed third parties on the suit land who have applied for building plans on the suit land, namely Wasswa and Hassan Kimera and Darius Mugisha Rogers.

- ii. The applicant further stated that she discovered that the respondent has allowed a one Moses Sali on the suit land who now claims an interest therein and Grace Nague Sissy Nabasujja who also claims a substantial portion thereof. She also said that the respondent allowed other persons to occupy the other part of the land and the said persons have set up a factory or a workshop manufacturing and processing huge pipes for wide billboards.

- iii. The applicant averred in her affidavit in support that the respondent's direct acts/ omission and orchestration, through sophisticated collusion, other persons have setup residential houses on the portion which the respondent earlier claimed and the said persons purport to claim separately, in a move which will see me lose the land to rather third parties if the order staying execution remains in force.
- iv. She said that if the respondent was to disown all the said persons then the respondent would remain with no claimed portion on the suit property since all of it would be in the hands of the third parties
- v. That the activities of the Respondent are an abuse of the court order which was issued by court in good faith. She prayed that the order for stay be vacated.

5. Affidavit in reply

- i. The respondent averred in the affidavit in reply that it is not true that he constructed houses on the suit land. He said by the time he got the order of stay he had four houses, a piggery house and gardens which he has maintained up to date. That all the plots which the

applicants captured are for his neighbors which are adjacent to his kibanja/land.

- It. He said that since he obtained the order for stay of execution, he has respected every letter in the order and he even failed to plaster his houses since then for obeying the said court orders. That the applicant is well aware of the people who are constructing on part of the suit land who have been battling with her with police and Kira Town council
- Ill. He averred that all the photographs attached to the applicant's application are faulty and only intend to misguide this Honorable Court to vacate the order and evict him without justifiable reasons. That although the letter was addressed to him, it is not true that he was the one constructing, it's his neighbors Ssali Moses and Jane Nabulime Kayizzi, whom they share boundaries.
- Iv. He said that at the time the applicant sued him in 2009, he was much aware that the suit land had several occupants but chose to drag him to court alone and left out others for her best reasons
- He stated that the alleged workshop is his business where he derives sustenance and it has been in operation since 2010 up to date. He added that he has never sold any part of his kibanja to the alleged neighbors or connived.
- VI The respondent further stated that the entire land of Kyadondo Block 185 plot 53 1 which is the subject matter before courts of law, the applicant has never been in occupation of the same apart from holding a title that her husband Thomas Walusimbi Musoke bought when the family of Yosiwa Kayizzi is in full occupation thereof. That he (respondent) bought from Fred Muwanga the heir of Yosiwa Kayizzi in 1992 wherein he took possession of the same and the remaining part including the grave yards claimed by 3 groups of people to wit Sali

Moses, Grace Nague Cissy Nabasujja, Jane

Nabulime Kayizzi the only surviving daughters to the estate of the late Yosiwa Kaytztz. He averred that for the above reason, it is not true that he is the one who brought these people on the suit land.

vll. The respondent also replied the applicant and said that it is not true that he failed to prosecute the appeal since he has always instructed his lawyers to secure a hearing date for the appeal.

6. Affidavit in rejoinder

- i. The applicant stated that the affidavit in reply is full of falsehoods as the respondent fraudulently, or negligently allowed the third parties on the suit land before parting with possession and carrying out activities that are breach of the order maintaining the status quo/staying execution
- ii. That the respondent clearly told both the trial court and appellate court that he had purchased and owned 2.5 acres of kibanja on the suit land and the order staying execution was made in that belief
- iii. The applicant stated in paragraph 10 of the rejoinder that she has knowledge that after failing to conclude a deal with the persons who had applied for building plans, the respondent brought in Moses Sali and whatever is done on that land, there is meeting of minds between the two, clandestinely.
- iv. She averred that the respondent gives defence in favour of land grabbers whom he fraudulently brought on the land, implying the suit was filed in collusion. And that the allegations are wild and unsubstantiated and the respondent never mentioned the alleged kibanja holders on the suit land anywhere in the record but the same was an afterthought aimed at circumventing the course of justice.
- v. She said that the activities deplete the land and the same shall not be suitable for commercial agriculture the activity she intends to use the land for.

7. Locus visit

- 8. This court visited locus on 13th April, 2022 and made the following observations;
- i. There were casements works making Billboards, stone slating business and brick making business.
- ii. There was a banana plantation and piggery farming.
- iii. There were more than one residential house that looked old and a newly fenced constructed house down at the extreme end of the kibanja obviously within the 2.5 acres per the pleadings
- 9. Parties proceeded by way of written submissions and both sides complied.

- 10. Allan Arinya represented the applicant whereas Abbas Bukenya represented the respondent.

II. Court Resolution

- 12. The law on contempt is discussed in the East African Court of Justice in the decision of Hon. Sitenda Sebalu Vs. Secretary General of the East African Community EAC Reference No. 8 of 2012 while citing the case of Sarah Nabawanuka and 7 others Vs. Makerere University & 2 others Miscellaneous Application No. 420 of 2019 laid out the ingredients of contempt and these includes: -
 - Existence of a lawful order I
 - The potential Contemnor's knowledge of the order II.
 - The potential contemnor's ability to comply and; III.
 - The potential contemnor's failure to comply with/disobedience of the order IV.
- 13. This court is going to be guided by the ingredients above

14. Existence of a lawful order

- 15. There is a ruling on the court record under Miscellaneous Application No. 193 of 2015 which stayed execution of the findings in Civil Suit No. 204 of 2009. It is also not in dispute that there is a court order in that regard.

16. The Potential Contemnor's knowledge of the order

17. The respondent knew of the order because the application for the same was instituted by him and the order for stay was made in his favour. So, there is no doubt he had knowledge of the order.

18. The Potential Contemnor's ability to comply

- 19. Since the order was made in favor of the contemnor, he had the ability to comply and in case of any desire to act beyond the order, he ought to apply for variation.

20. The potential contemnor's failure to comply with/disobedience of the order

- 21. Whereas the respondent avered that he complied with the court order, the applicant claim that the respondent abused the court order and therefore he is in contempt of court.

- 22. In a bid to prove the above claim the applicant stated that the respondent has constructed buildings on the suit land in utter disregard of the court order, allowed third parties on the land, allowed other persons to occupy the other part of the land and the said persons have set up a factory or a workshop manufacturing and processing huge pipes for wide billboards.
- 23. This court visited the locus and it was observed that there were a casement bill boards business, slated stones' business and also found that at the extreme end of the kibanja there is a newly constructed wall fenced house. The respondent however denies disobeying the court but adds that the constructions are being carried out by other kibanja owners who were there even at time the applicant sued him under Civil Suit No. 204 of 2009. He also averred that the businesses on the land are for his sustenance.
- 24. I have looked at the order that was made in an application for stay of execution. In that order, the status quo was limited to farming activities and residential. This would literally mean that the workshop for manufacturing and processing of huge pipes for wide billboards and stones slating business as well as the construction of the new house were not covered by the order.
- 25. Annexure E4 attached on the application shows that in Civil Suit No. 204 of 2009 the respondent said the size of his kibanja to be 2 1/2 acres. Although in the instant application he stated that the newly constructed house on the suit land belongs to another kibanja holder, on the ground, it falls under the 2 and a half acres claimed by him in the trial court. Equally this is what court saw when it visited the land.
- 26. Without prejudice to the above, this court must answer the issue whether a party in favor of whom the order was made can contempt it. To answer this question, I will define the meaning of the term contempt.
- ²⁷. The Black's Law Dictionary 7th Edition ps. ³ 13 defines contempt of court as "a disregard or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior

or insolent language, in its presence or as to disturb the proceedings or to impair respect due to such a body."

- 28. Civil Contempt is further defined in Halsbury's Law of England Volume 1(1) 2001 paragraph 458 as; "A refusal or neglect to do an act required by a Judgment or Order of the Court within the time specified in the Judgment or Order, or to disobey a Judgment or Order, requiring a person to abstain from doing a specified act..."
- 29. Following the above definitions, this court can only conclude that even a person in whose favour the order was made can be in contempt, for as long as he or she acts beyond the extents of the order or disobeys the order.

- 30. Consequently, I would therefore find that by the respondent allowing the newly constructed house on the suit land, and opening up of the two businesses that's; pipe processing and stone slating that were not covered by the order, he disobeyed the court order which amounted to contempt.

31. Remedies available

- 32. The applicant prayed for the following orders;
- (i) A declaration that the respondent's actions are in contempt of the court order, issued vide High Court Misc. Application No. 093 of 2015, dated 21st April 2016.
- An order of this honorable court vacating the said court order (ii)
- An order against the respondent to pay damages and fine for the contempt (iii)
- An order committing the respondent to prison for contempt of the said court order. (iv)
- Costs of this application (")
- 33. Section S.33 of the Judicature Act provides that "The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."
- 34. The general principle of law is that "a party who knows of an order... cannot be permitted to disobey it As long as the order exists, it must not be disobeyed."
- Commissioner General Uganda Revenue Authority MA 4212010 the court while citing Halsburys Laws of England vol. 9 (1) paragraph 492 stated that "Civil contempt is punishable by way of committal or by way of sequestration. Sequestration being the act of placing, for a temporary period of time, the property of the contemnor into hands of sequestrators who manage the property and receive rent, and profits. Civil contempt may also be punished by a fine, or an injunction granted against the contempt 35. In the case of Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd v The
- 36. It is trite that imprisonment in 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. See *Re Contempt of Dougherty* 429. Michigan 81. 97. and (1987)
- 37. From the evidence in this application, the order was made in favour of the respondent limited to farming activities and residential, but the respondent

acted beyond the order to the detriment of the applicant. I find him guilty of contempt. This court makes the orders below accordingly.

38. This application succeeds in the following terms;

- (i) It is declared that the respondent's actions are in contempt of the court order, issued vide High Court Misc. Application No. 093 of 2015, dated 21st April 2016.
- (ii) The sum of shs. 15,000,000/- is awarded against the respondent as a penalty for contempt of court orders in Misc. Application No. 093 of 2015. The sum is to be deposited in court within 21 days from the date of this ruling OR that the respondent be imprisoned for 6 months.
- (iii) [n order to avoid disorder on ground, this court has limited the existence of the stay of execution to 6 months only to allow the prosecution of the appeal OR failure of which the order shall be vacated for being an abuse of court process having been in place for 8 years now.
- (iv) Costs are awarded to the applicant.

Given under my hand and seal of this court this 2nd day of April 2023

Y NYANZI YASIN TRTAL JUDGE

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Prepared on 13 October 2026 · Esheria