

UGANDA / JUDGMENT

Nakandi v Katongole (Misc. Application No. 252 of 2018) [2018] UGHCLD 43 (10 May 2018) [2018] UGHCLD 43

COURT

HC: Land Division (Uganda)

BEFORE

Kawesa, J

CASE / FILE NUMBER

Misc. Application No. 252 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH

COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISC. APPLICATION NO. 252 OF 2018

(ARISING FROM CIVIL SUIT NO. 0433 OF 2014)

EDITH NAKANDI:.....APPLICANT

V E R S U S

UMAR KATONGOLE:.....RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant brought this Application by Notice of Motion under Section 98 of the Civil Procedure Rules, Section 33, 36 (I) (a) of the Judicature Act and O. 52 rr 1 and 2 of the Civil Procedure Rules.

This application is seeking the following orders;

1. The Respondent, his agents, servants and any other persons claiming interest from him be arrested and or committed to Civil Prison for disobedience of the orders of ***Hon. Mr. Justice Henry I. Kawesa in Misc. Application No. 0775/1075 of 2017 dated 9th November 2017***.

2. The Respondent be ordered to make good of the losses suffered and or occasioned by the Applicant as the result of the disobedience of the Court order.
3. This Honourable Court orders for the restoration of the *status quo*.
4. An order that the Applicant be paid costs occasioned to the Applicant.

This application has been supported by the affidavit of the Applicant; Edith Nakandi and briefly are that;-

1. The Court issued a temporary injunction on the 5th day of May, 2016 against the Respondents, his servants, agents or other persons acting through his authority or on his behalf, restraining him from any further transfer of and undertaking any other dealings in the land and other developments comprised in Kyadondo Block 223, Plot 766 now plots; 4871,4972,4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980 and 4981; land at Namugongo until the main suit No. 433 of 2015 is disposed of.
2. The Applicant on the 12th day of May, 2017 was forced to sign a Consent Order with the Respondent in HCCS No. 433 of 2015 which was challenged and was successfully set aside on the 9th day of November 2017 by this Court and the judge (His Lordship Henry I. Kawesa) ordered that the parties revert to the position which was ordered by the last trial Judge in HCCS No. 433 of 2015, granting the injunction till the final disposal of the main Suit No. HCCS No. 433 of 2015) which should be immediately fixed for hearing.
3. That the Respondent has failed to comply with the said order and he is carrying out developments on to the suit property with impunity, and that the *status quo* per the Court order has been changed by the Respondent. And that the Respondent has transferred plots 4975 and 4979 into the names of the other third parties and that he has continued to transfer the said plots.
4. The Respondent was not to sale transfer or such related tractions in respect of the suit property until the final determination of the matter.

While denying the contempt alleged, the Respondent; Umar Katongole, by affidavit affirmed the following;

That around 2015, an application for a temporary injunction was granted to the Applicant by the then trial Judge *Hon. Mr. Justice Kwesiga J. W.* which expired in November and he halted all the construction among other things for completion of the houses and rented some out.

He stated further that during that period, he sold part of the land to other parties and on the 20th day of November 2017, upon an application by the Applicant under MA No. 1075 of 2017, arising out of the instant main suit, a consent between him and the Applicant was set aside reinstating the orders of a temporary injunction that existed prior to the consent.

That upon that order, he automatically and instantly stopped any developments and transactions on the suit land and that he transferred the certificates of title attached to this application when there was no order for a temporary injunction as it is evidence on the dates of transfer, which are 17th May 2017.

The Respondent further affirms that the photos attached by the Applicant are aimed at misleading Court as they present a position before a Consent Judgment was set aside, and that he made the developments when there was no temporary injunction or after they entered a consent but not after the reinstatement of the injunction.

The parties were allowed to file submissions and from the submissions of Counsel for the Applicant, he framed two issues which shall be resolved by this Court and these include;

1. Whether the Respondent acted in contempt of the Court orders.
2. What are remedies available to the parties.

Resolution of the issue

Issue No. 1:

Whether the Respondent acted in contempt of the Court orders.

The law relating to Contempt of Court is now settled law in Uganda as it has been discussed in a number of cases. In the case of ***Stanbic Bank (U) Ltd & Anor versus The commissioner General – URA MA NO. 42 of 2010*** cited by Counsel for the Applicant where Mulyagonja J cited with approval the definition of contempt of Court as set out by ***Salmon versus Baker (1972) ALL ER 997 at page 1001;*** it may, as in the present case, consist of refusing to obey an order of Court.

It was also defined in ***Stanbic Bank (U) Ltd (supra)*** where ***Lady Justice Mulyagonja*** based her definition on **Halsbury's Law of England, Vol.9 (1) 4th Edition** which is as follows;

*****Contempt of Court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which creates substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to Judgment, Orders or other process of Court and involving in private injury****

Basing on the above cited case of ***Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd versus Uganda Revenue Authority MA No. 42 of 2010*** still, by ***Hon. Lady Justice Irene Mulyagonja*** and the case of ***Hon. Sitenda versus Secretary General of the East African Community Ref No.8/2012*** cited by Counsel for the Applicant the conditions necessary to prove contempt of Court were outlined as follows;

* Existence of a lawful order

* The contemnor's knowledge of that order

* The potential contemnors' failure to comply i.e., disobedience.

As to whether the Respondent is guilty of contempt of Court, Counsel for the Applicants submits that this Honourable Court issued a temporary injunction Order on the 5th day of May 2016, against the Respondent from any further transfer or undertakings and developments on Block 223 Plot 766 now Plots; 4871, 4972, 4973, 4974, 4975, 4976, 4977, 4978 and 4981 Land at Namugongo until the main suit No.433 of 2015 is disposed of. That on the 12th day of May 2017 the Applicant was forced to sign a Consent Order with the Respondent for the main suit which consent the Applicant successfully challenged and it was set aside on the 9th day of November, 2017.

He submits that the Respondent was not to sale, transfer or such related transactions until the disputes between the parties are determined by this Court, however, that the Respondent failed to comply with the said order and he is carrying on developments onto the suit land with impunity and that the *status-quo* as per the earlier Court Order has been changed by the Respondent.

Further that the Respondent has transferred Plots 2975 and 4979 into the names of other third parties in total disregard of the Court order and he has failed to comply with the order despite several demands and involving different stake holders.

In reply, Counsel for the Respondent agreeing to the said Court order of 20th November, 2017 stated that the Respondent has not disobeyed the said Order. That before the Court made this order, there was a valid consent entered into by the parties on the 12th day of May, 2017 which gave the Respondent the capacity to dispose of the properties that it is by consent that some of the land was transferred to third parties who are bonafide purchasers for value without notice, and Counsel insists that the Respondent transferred the properties after a consent had been entered between him and the Applicant and that during that time, the Consent Judgment was still in force before it was set aside.

He submits further that by consent, the Applicant agreed to remove any encumbrances on the land in issue and that the Respondent was at liberty to utilize the land without any further claim by the Applicant and by 20th November, 2017 when the consent was set aside, some of the land had already passed and changed hands.

It must be noted that setting aside of a Consent Judgment and Court reverting the parties to the Orders of the temporary injunction is not in dispute, what is in dispute is whether the Respondent acted contrary to Court Order which were reinstated by Court after setting aside the Consent Judgment.

According to **Halsbury's Law of England Volume 1(1) 2001 paragraph 458** *Civil Contempt* *and its consequences* are defined as;

*“*A civil contempt of Court to refuse 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...”**

Halsbury’s Law of England Vol 9(1) paragraph 492 defines Civil Contempt as that ***punishable by way of committal or by sequestration.*** In ***Wild Life Lodges Ltd versus County Council of Narok and Another (2005) 2 EA344 (HCK)*** held that;

*“*A Court of Law never acts in vain and such touching on contempt of Court take precedence over any other case of invocation of the jurisdiction of the Court”**.

Further in the case of ***Wild Life Lodges Ltd Versus County Council of Narok and another (2005) 2 EA344 (HCK)*** it was held that;

**** *It was plain and unqualified obligation of every person against or in respect of whom an Order was made by a Court of competent jurisdiction to obey it until that Order was discharged, and disobedience of such an Order would, as a general rule , result in the person disobeying it being in contempt and punishable by committal or attachment... a party who knows of an Order, whether null or valid, regular or irregular, cannot be disobeyed....in cases of illegal contempt, the breach for which the alleged contemnor is cited must not be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities...”**

It is trite law that a party who knows of the existence of an Order of Court is obliged to obey it, like in this case, it is evident from the affidavits adduced by the parties and submissions of both Counsel that a temporary injunction was granted on the 5th May 2016 pending the determination of the main suit, a year later 12th May, 2017), the parties entered a consent whereby the main suit was disposed of by this consent.

On the 17th May 2017, the Respondent effected the transfer to third parties of Block 223 Plot 4975 respectively who were later transferred to other parties on 22nd August, 2017 and 14th June, 2017 and these were all done before the consent was set aside on the 20th November, 2017.

The Applicant in her affidavit does not adduce evidence to prove to this Court that the Respondent transferred the suit land after the Consent Judgment was set aside except relying on the transfers which were effected before the setting aside of the consent by this Court.

It my finding that there was no Court Order forbidding the Respondent to act between 12th May, 2017 when the consent was entered into and 20th November, 2017 when the said consent was set aside.

For reasons stated above, I find the Respondent not in contempt of any Court order.

Issue 2: What are the remedies available to the parties

Having found that the Respondent is not in contempt of the Court Order issued in relation to M. A No.0775 of 2017, it shows, it follows that the Respondent cannot be committed to Civil Prison.

Section 98 of the Civil Procedure Act under which this application is brought states that, a Court has inherent powers to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. However, it is worthy to note that this jurisdiction must be exercised judiciously without prejudice.

Therefore without prejudice, this application is dismissed with no Orders to costs.

.....

Henry I. Kawesa

JUDGE

10/05/2018

10/05/2018:

Kigozi Nasser for the Respondent.

Respondent absent.

Applicant present.

Respondent present.

Court: Ruling delivered in the presence of the parties above.

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Henry I. Kawesa

JUDGE

10/05/2018

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