

UGANDA / JUDGMENT

Nambalirwa Zaffarani and Others v Dr. Sheikh Ahmed Muhammad Kisuule (Civil Miscellaneous Application 85 of 2024) [2025] UGHC 370 (24 April 2025) [2025] UGHC 370

COURT

High Court of Uganda

BEFORE

Bukirwa, J

CASE / FILE NUMBER

Civil Miscellaneous Application 85 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT LUWERO HCT-17-CV-MA-0085-2024 ARISING FROM MISCELLANEOUS APPLICATION NO. 16 OF 2024
ALL ARISING FROM CIVIL APPEAL NO. 13 OF 2023

1. NAMBALIRWA ZAFFARANI

2. BUSUULWA MUHAMMAD

3. LEJJU MUHAMMAD ::::::::::::::::::::::::::::::::::: APPLICANTS VERSUS

DR. SHEIKH AHMED MUHAMMAD KISUULE ::::::::::: RESPONDENT RULING

Background

This Application was brought under Article 28(12) of the 1995 Constitution of the Republic of Uganda, Sections 14 and 16 (2) of the Judicature Act, Section 98 of the Civil Procedure Act, Order 52 of the Civil Procedure Rules seeking the following orders;

- a) A declaration that the Respondents are in contempt of the order for stay of execution made in Miscellaneous Application No. 16 of 2024 against Orders made in consolidated civil suits No. 174 of 2021 and No. 138 of 2016.
- b) The Respondent be fined UGX. 200,000,000 to purge themselves of contemptor;
- c) Be committed to a civil prison for contempt.

- d) General Damages of a minimum of UGX 150,000,000 for civil contempt of the court.
- e) Punitive damages of a minimum of UGX. 100,000,000.
- f) Interest on (d) and (e) at a rate of 25% per annum from the date of the Ruling until payment in full.
- g) Costs of the Application be provided for.

The Respondent filed an Affidavit in Reply opposing this Application wherein he prayed that this Application be dismissed with costs.

Representation

The Applicants were represented by M/S Adalet & Co. Advocates while the Respondent was represented by M/S Nabukenya, Mulalira and Co. Advocates.

Determination of the Application

In determining this Application, I will adopt the two issues raised by the parties which are;

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

Before I deal with the merits of this Application, I will address the Preliminary points of law raised. Counsel for the Applicant objected to the filing of a supplementary affidavit deposed by Mugerwa George who is not a party to this application. Counsel submitted that Mugerwa George is an alien to this suit and maintaining his affidavit on the court record would condone the abuse of court process.

In reply, counsel for the Respondent submitted that Mugerwa George is a third party who is alleged to have purchased the suit property from the Respondent herein in March 2024 which makes his evidence important as it helps court in reaching a just conclusion on this matter.

The law concerning the deposing of Affidavits is laid out in **Order 19 Rule 3(1) of the Civil Procedure Rules** which states that:

"Matters to which affidavits shall be confined.

(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated..."

From the above law, it is my understanding that any person who has knowledge of facts that could be helpful to the court in determining a suit conclusively may depone an affidavit and have it filed in respect to a matter before the court. **See Mbarara Municipal Council Vs. Jetha Brothers Ltd, Supreme Court M. A no. 10 of 2021.**

In the instant case, I have had the opportunity to look at the Supplementary Affidavit deposed by Mugerwa George and I am convinced that not only does he have knowledge of facts pertaining to this case but also presents evidence that is essential to this case. I, therefore, overrule this preliminary objection raised by counsel for the Applicant and shall move on to determine this case on its merits.

Issue 1: Whether the Respondent is in contempt of court.

Counsel for the Applicant submitted that in the determination of a suit involving an action amounting to contempt of court, the following principles have to be met;

- The existence of a lawful order;
- The potential contemnor's knowledge of the order;
- The potential contemnor's failure to comply.

Counsel for the Applicants further submitted that in the instant case, there was a lawful order passed by this court, which order was known to the Respondent and the Respondent did not heed to that order when he acted with impunity and demolished the 1st Applicant's house before the Appeal was disposed of.

In reply, Counsel for the Respondent submitted that it is not in dispute that there is an existing court order but that the Respondent has never disobeyed the said order. Counsel further submitted that by the time the order was made by the Court on the 16th of October 2024, the Respondent had sold off his interests in the suit land to Mugerwa George in March 2024. Counsel concluded by submitting that the averments contained in the Applicants' Affidavit in support of the Application that the Respondent disobeyed the court order and disrespected the authority of the court are mere falsehoods, based on hearsay and no iota of evidence has been adduced by the Applicant that the Respondent or his agents disobeyed the order of this Honourable Court.

In rejoinder, Counsel for the Applicants submitted that it was the Respondent through his agents who proceeded to demolish the Applicants' house structures and that this was in total violation of the order for stay of execution.

I have carefully read and taken into consideration the submissions of both parties and the locus in quo proceedings in my ruling.

The Supreme Court in **Ssempebwa and others V Attorney General Civil Application No.05 of 2019** held that to be found in contempt, it must be proved;

- (i) That an order was issued by the Court.
- (ii) That the order was served or brought to the notice of the alleged contemnor (the respondent.)
- (iii) That there was non-compliance with the order by the Respondent.
- (iv) That the non-compliance was wilful or mala fide.

Once the Applicant has proved noncompliance with the court's order, by showing the existence of the order and the respondent's noncompliance, the burden then shifts, and the potential contemnor must prove inability to comply or justifiable cause.

1. That an order was issued by the Court

The first requirement in proceedings for contempt of court is for the Applicant to prove the existence of a clear and unambiguous court order. The order must be unambiguous so that it is easily understood by all. The Court will only punish for disobedience of a court order if satisfied that the terms of the release order are clear and unambiguous.

The court order dated 16th October 2024 issued and marked **Annexure B** to the Affidavit in support states among other orders that;

"This matter coming up for ruling this 18th September 2024 before His Worship KENNETH TUMWEBAZE, ASSISTANT REGISTRAR"

IT IS HEREBY ORDERED AS FOLLOWS:

"1. A stay of execution doth issue against the Respondent, his agents, or anyone rightfully claiming under him from executing the decree and/or arising from consolidated Civil suits No. 174 of 2021 and No. 138 of 2016 in the Chief Magistrates Court of Luwero at Luwero pending the hearing and final determination of the Civil Appeal from the same suits now pending before this Honourable Court..."* (Emphasis is mine)

I find that the order is definite and free of ambiguity or vagueness. Its scope is specifically and explicitly stated so as not to lead to confusion or be open to various interpretations. The Applicants have satisfied this requirement.

2. That the order was served or brought to the notice of the alleged contemnor (the respondents)

In proceedings for contempt of court, it is important to demonstrate that a contemnor was given notice of the existence of a clear and unambiguous court order. The law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally on him or her (See *Hon. Sitenda Sebalu v. Secretary General of the East African Community Ref No. 8 of 2012 (EACJ)* and *Stanbic Bank (U) Ltd and another v. Commissioner General Uganda Revenue Authority H. C. Misc. Application No. 42 of 2010*)

In the instant case, it is an undisputed fact that the Respondent was notified about the existence of the Court order as is shown in paragraph 6 of the Affidavit in Support of the Application and paragraph 11 of the Affidavit in Reply to this Application. The Applicants have equally satisfied this requirement.

3. That there was non-compliance with the order by the Respondent

A deliberate commission or omission that is in breach of the court's order will constitute wilful disobedience of the order unless it is casual, accidental or unintentional. It is trite that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings (*See Wild Life Lodges Ltd vs. County Council of Narok and another [2005] 2 EA 344*).

I am alive to the assertion by the Applicants that the Respondent disobeyed a court order when he allegedly went ahead and demolished the property which was subject of the court order above. However, this version of facts has not been backed up by any kind of evidence to prove that these acts of destruction were committed by the Respondent. All that the Applicants presented to this Honourable Court was evidence of destruction of the property which was confirmed by the court during the locus in quo proceedings. During the locus visit, this court also discovered that the perpetrators of this heinous act were never apprehended by the Police. This, therefore, leaves this Court without any shred of evidence pointing to the Respondent as the perpetrator in the destruction of the said property.

I am also aware of the fact that the Respondent is no longer the proprietor of the land which is the subject of these proceedings. The interest which the Respondent had in the suit land was extinguished when the land was sold to Mugerwa George on the 16th day of March 2024 way before the court issued the above court order on the 18th day of September 2024. Since the land sale took place before the Court order was given, the sale of the land cannot be stretched to fall in the circle of contempt of a court order.

Therefore, much as the court noticed that there was destruction of a property allegedly belonging to the 1st Applicant, this Court has not received sufficient evidence to prove that this destruction was perpetrated by the Respondent. As such, I shall restrain from finding that the Respondent was in contempt of the court order.

In the circumstances, the Applicants have failed to prove that the Respondent orchestrated the destruction of the property which is subject of the court order above. I am left with no option but to find that the Respondent is not in contempt of a court order.

This issue is resolved in the negative.

Issue 2: What remedies are available to the parties?

Having found that the Respondent is not in contempt of a court order issued by this Court, I hereby dismiss this Application. Each party shall bear its costs.

I so order.

Delivered on ECCMIS on 24th April 2025

FARIDAH SHAMILAH BUKIRWA NTAMBI

.....

JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2025/370/eng@2025-04-24>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nambalirwa-zaffarani-and-others-v-dr-sheikh-ahmed-muhammad-kisuule-civil-miscellaneous-application-85-of-2024-2025-ughc-370-24-april-2025-unknown-topi>

Prepared on 14 October 2026 · Esheria