

UGANDA / JUDGMENT

Nansamba Aidah and Another v Asasira Honest alias Peace (MISC. APPLICATION NO.258 OF 2023) [2024] UGHC 1213 (3 October 2024) [2024] UGHC 1213

COURT
High Court of Uganda

BEFORE
Nabakooza, J

CASE / FILE NUMBER
MISC. APPLICATION NO.258 OF 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISC. APPLICATION NO.258OE 2023

(ARTSTNG FROM MrSC. APPLTCATTON NO.13 OF 2023)

(ARTSTNG FROM MrSC. APPLTCATTON NO. 793 OF 2022)

(All arising from Civil Suit No. 710 Of 20221.

NANSAMBAAIDAH 1,

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MAJ. FRED MUHWEZI RUTUKAN APPLICANTS 2

VERSES**ASASIRA HONEST alias PEACE RESPONDENT****BEFORE: HON LADY IUSTICE NABAKOOZA FLAVIA****RULING**

- 1. This Application was brought by a chamber summons under Order 22 rule 23(1) and Order 43 rule 4 & 5 of the Civil Procedure Rules (as amended) seeking orders that:
 - n. An order of stay of execution of orders in lvdisc. Application No. 13 of 2023 be granted pending the lrcaring of Cittal Appeal No. 37 of 2023.
 - b. Costs of nnd incidentnl to this Applicntion be in the cause .
- 2. The grounds of the Application are contained in the chamber summons and the supported by an affidavit deposed to by the 2,d Applicant (Mal. Ered Muhutezi Rutukana). Briefly, they are. That the learned Assistant Registrar, Her Worship Afukwasa Justine, issued orders in contempt of court Vide Misc. Application No. 13 of 2023 which arose from Misc. Application No. 193 of 2022 and Civil Suit No. 110 of 2022; that the Applicants filed an appeal on "17/07/2023 against the ruling and the Respondent is pursuing execution of the orders against the Applicants;

that there is an imminent danger and threat to execute the orders of this Honorable court by way of payment of a fine of Ug shs 10,000,000/- each or, committal to civil prison for three months, if the application is not granted; that the application has been made without unreasonable delay, and if it is not granted, the appeal shall be rendered nugatory.

- 3. The application is further supported by a copy of a ruling vide Misc. Application No. 13 of 2023; a copy of a notice of appeal and ^a memorandum of appeal vide Civil Appeal No.37 of 2023; and a copy of a letter requesting for the record of proceedings dated 17 /07 /2023-

O Bief summanr of the case:

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- 4. The Respondent (Asasira Honest alias Peace) instituted HCCS No. ¹¹⁰ of 2022 and also filed HC Misc. Application No. 193 of 2022 seeking ^a temporary Injunction restraining the Applicants and their agents until the hearing and determination of the suit. By consent of Counsel for both parties, it was ordered that:

The parties in the presence of Counsel and their individual surveyors do carry out a boundary opening of the land comprised in FRV HQT 225 Folio 6, Block 360 Plot 42 Land Ltoantamu claimed by the Plaintiff and that of the 1st and 2nd Respondents comprised in plot 3, Block 64 Land at Kyalusatuka, Gomba and Block 60 plot 3 and 64 at Lutemirondo Gomba District.

- 5. It was further ordered that the boundary opening would be carried out by the District Staff Surveyor and that the costs were to be equally shared between the parties, among other.
- 6. The Respondent then filed Misc. Application No. 13 of 2023 for contempt of the above orders which application was resolved against the Applicant hence the instant application.
- 7. Representation. The 2nd Applicant was represented by M/s Ingura & Co. Advocates while the Respondent was represented by M/s Andrew & Frank Advocates.

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Counsel for both parties filed written submissions which will be considered in this ruling.

- 8. The Applicants' Counsel cited and relied on Order 22 rule 23(1); Order 43 Rule (4) and (5) of the Civil Procedure Rules and the case of **Kerilee Investments Limited Vs Krone (U) Ltd Court of Appeal Civil Appeal No. 227 of 2017**, where Justice S. B. K Kavuma (*as he then was*) stated that: for an application for an interim order of stay, it suffices to show that a substantive Application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not *necessary to pre-empt consideration of matters necessary in deciding whether* or not to grant the substantive application for stay. The most important consideration for a court to grant an interim order of stay of execution is to stop execution and ensure that an appeal, if successful, is not rendered nugatory.
- 9. Counsel submitted that a notice of appeal and a memorandum of appeal have been filed in this court; that a letter requesting for record of proceedings was filed with the court but the same has not been provided; that the Respondent has initiated execution proceedings against the Applicants which acts will render the appeal pending before this court nugatory; that since execution proceedings have just been initiated and no warrant of execution has been issued by the court, this court should grant the application to enable the matter to be concluded judiciously without regard to security for due performance of the decree or orders thereof.
- 10. In reply, Counsel for the Respondent submitted that the Applicants were found to be in contempt of court for willful disregard of a simple order to be part of a joint survey of a disputed land boundary. That the Applicants have not opted to cure the contempt but have instead preferred an appeal which can occasion further delay. That the intended appeal is a clear

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abuse of the court process, and that six months have passed since the Applicants applied for the typed proceedings but there is no demonstrable effort to follow up.

11. He submitted further that the Applicants are bound by the orders that flow from the suit since they submitted to the jurisdiction of court by submitting their written statement of defence. That the pending appeal represents a continuing contempt of court and a party cannot approbate and reprobate. That the court should require the Applicants to deposit the 10,000,000/- as a condition for the grant of the orders sought, failure of which the application should be dismissed with costs and the Applicants committed to prison for willful contempt of court. Counsel relied on the Supreme Court Case of Lawrence Musiitwa Kyazze Vs Eunice Busingye, Civil Appeal No. 18/f990; and added that the Applicant should provide security for due performance of 10,000,000/-.

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- 12. From the above submissions, I find the issue below appropriate for resolution:
- L. Whether the application for stay of execution of orders in Miscellaneous Application No. 13 of 2023 should be granted;
- 13. I have perused the record, especially Miscellaneous Application No' 13 of ²⁰²³ and the ruling issued by Her Worship Justine Atukwasa. It is undisputed that the Applicants were found in contempt of orders issued in Miscellaneous Application. No. 193 of 2022 which orders were granted by consent of Counsel for both parties.
- 14. Contempt of court was defined in the Supreme Court case of Betty Kizito Vs Dickson Nsubuga & 6 Ors (Civil Application No. 25 and 26 of 2021) which cited with approval the case of Johnson vs. Grant SC L923 SC ⁷⁸⁹ at 790 in which Lord President (Clyde) inter alia, explained it to connote: An offence consists in interfering with the administration of the law; in hindering and perverting the course of justice. It is not the dignity of court

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Which is offended - a petty and misleading view of the issues inuoluted- it is the fundamental supremacy of the law which is challenged.

The orders issued in Misc. Application No. 193 of 2022 which the Applicants were held in contempt of were not discriminatory since they were agreed upon by Counsel for both parties.

15. It is trite law that an order issued by a court with jurisdiction over the subject matter must be obeyed by the parties until it is reversed by an orderly and proper proceeding. (See *Wild Life Lodges Ltil Vs County Council of Narok and another* [2005] 2 EA 344). Further, in *Dilip Kumar P. Patel & 5 Ors Vs Kashya P. Kumar B. Patel & L0 Ors* (HCMA No. 840/2021) my brother Mubiru I pointed out that:

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When the nature of the contemptuous act has the effect of impeding the court's ability to adjudicate fairly in the proceedings before it by undermining its authority, such contempt must be purged before further steps may be taken. A party in contempt by disobeying an existing order cannot be heard in a different but related cause of action until such a person has purged himself / herself of the contempt.

- 16. The intention of granting the orders in Misc. Application No. 193 of 2022 was for the joint opening of boundaries so that court can ably resolve the parties' dispute in HCCS No. 110 of 2022. Thus, the prolonging of the exercise by the Applicants' tactics of refusing to obey court orders would mean delaying the hearing of the case and creating case backlog which the court is trying to fight.
- 17. The mere fact that the Applicants are dissatisfied with the court's orders and therefore lodged an appeal does not exonerate the contempt. Similarly, in *Male H. Mabilizi Kiwanuka Vs Attorney General* (Court of Appeal Civil Application No. 39 of 2022), the Court of Appeal held that an application has no merit because there is no legal right of appeal vested in a contemnor who has been committed to prison for civil

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contempt to be released save on application for bail pending appeal or pardon of the court that committed him for contempt.

18. In this case, I find that the failure to fully purge oneself of the contempt has the effect of preventing the contemnor from enjoying audience before court until he or she purges himself or herself of the contempt. It does not matter whether the matter to be heard is fresh or pending for as long as it is a related cause of action or defence (See. *Dilip Kumar P. Patel & 5 Ors Vs Kashya P. Kumar B. Patel & 10 Ors* supra). In *Erasmus Masiko Vs John Imaniragha, Christopher Mulenga & Commissioner Land Registration*, HC Misc. Application No. 1481 of 2016, my brother Bashaija J observed that:

It follows that there ought to be in the very least, to have been an effort by the \$1st Respondent who is the \$2nd Respondent in her official capacity to purge itself of the contempt by making the payment in court as a security for full compliance pending the intended appeal. The appeal as well as the application* for stay of execution does not purge the \$1st and \$2nd Respondent of contempt.

19. I find the above observation persuasive. In this case, the Applicants have not exhibited any remorse by making any deposit as ordered by court. By filing the instant application, they have come to court with unclean hands and granting the orders sought would mean to encourage their contemptuous actions. Consequently, this application is summarily dismissed without consideration of its merits. The Applicants shall pay the costs of the application.

Signed, dated and delivered at Mpigi this day of Men 2024.

abakocza Flavia. K Judge

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