

UGANDA / JUDGMENT

Ndibalwanya v Kasajja & 4 Others

(Miscellaneous Application 2053 of 2024)

[2024] UGHCLD 244 (1 November 2024)

[2024] UGHCLD 244

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 2053 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO 2053 OF 2024

(Arising from Miscellaneous Application No. 1153 of 2019)

(Arising from Civil Suit No.508 of 2017)

NDIBALWANYA TEREZA ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. KASAJJA ABDUL
- 2. KALIISA MUHAMED (legal representative of late Hajji Muhamadi Katongole)
- 3. MR. BYATAABA LUBEGA
- 4. MRS BYATAABA LUBEGA
- 5. KAMOGA SULAIMAN ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE HON. LADY JUSTICE NALUZZE AISHA BATALA**RULING*****Introduction;***

1. This an application by Notice of Motion brought under Article 128(2),(3), 50(2), 28(12), 23(1) (a) of the Constitution of Uganda, Section 98 of the civil procedure Act, Section 33(now section 37

of the revised laws) of the Judicature Act and O.52 rules 1 and 3 of the civil procedure rules for orders that;

- i) That the respondents be found guilty of contempt of court orders in Misc. Application No. 1153 of 2019(Arising from Civil Suit No.508 of 2017)
- ii) That the respondents being in contempt of the court orders, be punished by paying a fine to the government to a tune of Ugx 50,000,000 and also pay UGX 50,000,000 as damages to the applicants.
- iii) That in the alternative or additionally the respondents be committed to civil prison for contempt of court for 12 months
- iv) Costs of the application be provided for.

Applicant's evidence;

- 2. The application is supported by an affidavit deponed by Nalule Annet the lawful attorney of the applicant which briefly states as follows;
- i) That the applicant together with Ntugunda Evary instituted a suit vide Civil Suit No. 508 of 2017 against the respondents for trespass.
- ii) That the same parties filed Misc. Application No.1153 of 2019 for a temporary injunction order in order to maintain the status quo on the suit land until the hearing and determination of the main suit.
- iii) That the application for temporary injunction was determined in favor of the plaintiffs including the applicant.
- iv) That the ruling to the said application was delivered in the presence of the respondents, their counsel and they were later served with the orders.
- v) That in defying the said lawful orders of court, the respondents have gone ahead to sell part of the suit land to third parties, construction in progress and some houses are completed contrary to the temporary injunction order.

- vi) That the respondents be punished for their unlawful acts to deter them from violating court orders.

1st and 2nd respondent's evidence;

3. The application is responded to by an affidavit deponed by the 2nd respondent on behalf of the 1st respondent which briefly states as follows;
 - i) That the ruling for the temporary injunction application was delivered in the presence of the respondents and their counsel.
 - ii) That I live near the suit land and it is true that the other respondents have sold parts of the suit land and there is construction and building going on.
 - iii) That I believe the actions of the respondents' amount to contempt of court orders.

4th respondent's evidence;

4. The application is responded to by an affidavit in reply deponed by the 4th respondent which briefly states as follows;
 - i) That there is evidence of service of the said temporary injunction orders on the 4th respondent and 3rd respondent.
 - ii) That the 4th and 3rd respondents have never constructed any structures on the suit land.

5th respondent's evidence;

5. The application is responded to by an affidavit in reply deponed by the 5th respondent which briefly states as follows;
 - i) That there is no evidence of service of the said temporary injunction order onto the 5th respondent.
 - ii) That the Kibanja interest which the 5th respondent sold was not part of the land in issue.
 - iii) That the buildings attached in the photographs attached on the affidavit in support belong to me and other people I sold to and they do not form part of the disputed land.

Representation;

6. At the hearing, the applicant was represented by Counsel Serwadda Gonzaga Patrick of M/S Tayebwa, Sserwadda & Co. Advocates whereas the 1st and 2nd respondents were represented by M/S Byamugisha Gabriel & Co. Advocates and Counsel Serwadda Anguzosi of M/S Serwadda & Co. Advocates. All parties proceeded by way of written submissions which I have considered in the determination of this application.

Issues for determination;

- i) Whether the respondents are in contempt of the temporary injunction order?
- ii) What remedies are available to the parties.

Resolution and determination of the issues;

- 7. In the decision of **Uganda Super League v Attorney General Constitutional Application No.73 of 2013 Justice Kiryabwire** citing the Black's law Dictionary 7th Edition defined Contempt of court as; "Conduct that defies the Authority or dignity of court.
- 8. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for the protection of the public interest in the proper administration of justice, as observed by Lord Atkin in **Andre Paul Terence Ambar Appeal No. 46 of 1935 –v- the Attorney General of Trinidad and Tobago (Trinidad and Tobago) [19361 1 All ER 704, [19361 AC 322.**
- 9. Before any action can be found to amount to contempt of court, the following principles have to be established:
 - i) Existence of a lawful order.
 - ii) Potential contemnor knowledge of the order.
 - iii) Potential contemnor failure to comply, that is, disobedience of the order.

Existence of a lawful order.

- 10. It is the submission of counsel for the applicant that there existed a temporary injunction order vide Misc. Application No.1153 of 2019 which was delivered on the 11th day of August. This is a fact that is not disputed by the respondents.
- 11. I therefore find that there existed a lawful order arising from the temporary injunction application.

Potential contemnor knowledge of the order.

- 12. To prove contempt of a court order, the Applicant should prove that the Respondents were aware of the existing court order.
- 13. In the case of **Hadkinson vs Hadkinson (supra)**, Romer LJ relied on the case of **Church v Cremer (1 Coop Temp Cott 342)** where it was held that; "a party who knows of an order is whether null or valid, regular or irregular, cannot be permitted to disobey it as long as it existed". That a lawful order existed against the Respondent. Secondly, that they have to prove that the potential contemnor has knowledge of the order.*

- 14. It is the submission of counsel for the applicants that all the respondents have at all times been aware of the temporary injunction order since it was delivered by court in their presence
- 15. Counsel for the 3rd -5th respondents submits that the 1st and 2nd respondents were never party to the said temporary injunction order since they joined the main suit way after the temporary injunction was granted.
- 16. Counsel further submits that there is no evidence of a court order against the 3rd and 4th respondents and the transactions the 5th respondent is being accused to amount to contempt, were not performed over the suit land and the land he is selling to third parties does not form part of the suit land.
- 17. Upon perusal of the attachments on the application, the order of court that adds the 1st and 2nd respondent as defendants to the main suit was delivered on the 4th day of April 2024 by His Worship Samuel Kagoda Ntende and the temporary injunction order was delivered on the 11th day of March 2021 by Her Worship Nabakoza Flavia in the presence of the 3rd – 5th respondents represented by M/S Serwadda & Co Advocates.
- 18. It appears that counsel for the 3rd 5th respondents do not dispute the fact that his clients were aware of the said temporary injunction order but rather states that the 1st and 2nd respondents were never aware of the said order.
- 19. In rejoinder, counsel for the applicant submits that he concurs with the submission of the 1st and 2nd respondents since they support their claim and only condemn the 3rd – 5th respondents for contempt of the temporary injunction order.
- 20. It is to the finding of this court that the 3rd 5th respondents were aware of the lawful order since it was delivered in their presence.

Potential contemnor failure to comply, that is, disobedience of the order

- *21.* As rightly stated by Justice Stephen Mubiru in the case of Odoi Odome v Uganda Electricity Generation Company (Misc Application No.1088 of 2022), "The applicant must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient particularity to enable the respondent meet the accusation..."
- 22. Counsel for the applicant has furnished evidence to show that the 3rd – 5th respondents have continued to disobey the temporary injunction order by constructing and selling off their Kibanja interests on the suit land.
- 23. The averments made by the 3rd 5th respondents alleging that the land being disposed off doesn't form part of the suit land are not backed by any evidence as referred to in their affidavits in reply

- 24. It is the humble prayer of counsel for the applicant that the 3rd – 5th respondents be found in contempt of the temporary injunction order.
- 25. Having found that the 3rd 5th respondents had knowledge of the said order and failed to comply with the temporary injunction order, this court finds the 3rd – 5th respondents to be in contempt of the temporary injunction order.
- 26. Therefore, the instant application succeeds with the following orders;
- i) That the 3rd 5th respondents are hereby compelled to obey the temporary injunction order vide Misc. Application No. 1153 of 2019.
- ii) That the 3rd 5th respondents should pay a fine of UGX 1,000,000 (one million Ugandan shillings only for being in contempt of the court order.

iii) Costs shall be in the cause.

I SO ORDER.

NALUZZE AISHA BATALA

JUDGE

01st /11/2024

Delivered on the 1st day of November, 2024 electronically via ECCMIS.

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