

UGANDA / JUDGMENT

Ngobi v Orishaba (Miscellaneous Application 130 of 2023) [2024]

UGHC 615 (29 May 2024)

[2024] UGHC 615

COURT

High Court of Uganda

BEFORE

Bukirwa, J

CASE / FILE NUMBER

Miscellaneous Application 130 of 2023

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

THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT JINJA****MISCELLANEOUS APPLICATION NO.130 OF 2023****(ARISING FROM MISC. CAUSE NO.24 OF 2022)****NGOBI ANTHONY:.....****VERSUS****1. OLIVIA ORISHABA****2. DOKA AHMED RASHID :..... (REGIONAL POLICE
COMMANDER BUSOGA NORTH POLICE REGION)****BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI****RULING****Background**

This application is brought under the provisions of section 33 of *The Judicature* Act, section 98 of The Civil Procedure Act, and Order 52 rules 1, 2 and 3 of The Civil Procedure Rules. The applicant seeks an order holding the respondents in contempt of a court order vide Misc. Cause

No.24 of 2022 compelling them to release the Applicant's motor vehicle Toyota Wish Registration No. UBE 010L unlawfully detained at Kamuli Police Station, the Applicant also prays that the Respondents be committed to civil prison for contempt of the same court order and general damages of UGX 20,000,000 be granted to the Applicant against the Respondents.

The grounds in support of the Application are contained in the Affidavit in Support of the Application deposed by Ngobi Anthony the Applicant.

The 1st Respondent filed an affidavit in reply to the Application opposing the Application however it was filed out of time. A prayer was made to this court to validate the said affidavit in reply.

Representation

The Applicant was represented by M/S Isabirye & Co. Advocates while the Respondent was represented by M/S Bloom Advocates.

Determination of the Application

Page 1 of 8

The court will adopt the following issues while determining this Application;

- 1. Whether the Respondents are in contempt of the Court Order issued in Miscellaneous Cause No.24 of 2023.
- 2. What are the remedies available to the parties?

Preliminaries

Before I proceed to determine the suit, counsel for the Applicant raised a point of law that the 1st Respondent's Advocates belatedly filed and served the 1st Respondent's affidavit in reply. The said affidavit was filed and served on 9th January 2024 over 2 months out of time without seeking leave of court having been served with the present application on 26th October 2023 to which they acknowledged receipt. Counsel prayed that the court should expunge the 1st Respondent's affidavit in reply from the court record.

Counsel for the 1st Respondent argued that an affidavit in reply is not a pleading but evidence hence the rules that apply to pleadings cannot be rigidly applied to affidavits. He relied on the case of Ramgarhia Sikh Society & Others V Ramgarhia Education Society and others Misc. Application No.352 of 2015 to buttress his submission. He prayed that this Court uses its discretion to admit the affidavit in reply in the interests of justice in order to evaluate the case on its merits.

Having considered the submissions by both parties, I must say that this is a critical area when it comes to deciding whether or not an affidavit in reply filed out of time should be admitted by this court. Whereas the court is striving to ensure that timelines are strictly followed by the litigants to ensure expeditious dispensation of justice, it is also cognizant of the fact that it shall need all the available evidence to reach a just conclusion of any dispute. See *Lam-Lagoro Vs Muni University Miscellaneous Civil Cause No.7 of 2016 Ramgarhia Sikh Society & Others V Ramgarhia Education Society and others Misc. Application No.352 of 2015*.

Nonetheless, the common ground is that this court is clothed with the discretion and powers to decide whether to admit or expunge such an affidavit from the proceedings/record. These powers are enshrined under Article 126 (2) (e) of the Constitution, Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act.

In the instant case, counsel for the 1st Respondent mentioned that the 1st Respondent had been ill and as a result, this led to the delay in the deposing of the affidavit in reply. It should equally be noted that the affidavit in reply was

Page 2 of 8

filed on 9th of January 2023 before the Application came for hearing. The Applicants had an opportunity to file their rejoinder before the hearing as well. In the circumstances, I find that the late filing of the affidavit in reply did not prejudice the Applicants in any way.

Furthermore, the nature of this Application which is seeking to find the Respondents in contempt of the court order requires that the court weighs the evidence on both sides to ensure that it arrives at a judicious conclusion. Therefore, in the interests of determining this matter wholly, this court shall admit the affidavit in reply.

I also take note of the fact that the 2nd Respondent did not file a reply to the Application. This court shall order that this matter proceeds *ex parte* against the 2nd Respondent and the orders given herein shall be binding on the 2nd Respondent.

Issue 1: Whether the Respondents are in contempt of the Court Order issued in Miscellaneous Cause No.24 of 2023

Submissions by counsel for Applicant

Counsel relied on Halsbury's laws of England (4th Edition paragraph 284,458) to assert that it is civil contempt to refuse or neglect to do an act required by a judgment or an order of the court within the time specified in that judgment or to disobey a judgment or order requiring a person to abstain from doing a specific act.

He also relied on the decision in *Megha Industries Ltd V Conform Uganda Limited* HCMC No.21 of 2014 where the court held that contempt of court exists where there is a lawful court order and a potential contemnor must have been aware of the court order and failed to comply with it the order. He argued that there is an order that was issued by this Honourable court on 3rd March 2023 vide Misc. Cause No.24 of 2022 directing among other orders the unconditional release of motor vehicle Toyota wish Registration No. UBE 010L. He argued that the Respondents have knowledge of the existence of the said order which they have not adhered to claiming that it cannot be released until disposal of the appeal in respect to this matter.

Submissions by counsel for the 1st Respondent.

Counsel submitted that the evidence on record demonstrates that the 1st Respondent did not intentionally disobey the order and has valid reasons for not being in the best position to carry out the order. Counsel submitted that the said vehicle was detained on orders of the CID headquarters in Kibuli and the office

Page 3 of 8

of the Director of Public Prosecutions. Secondly, the vehicle is not in possession of the 1st Defendant as she was deployed to Gomba district after completing a refresher course at Kabalya Training School in Masindi District. Counsel further stated that the allegations concerning the institution of an appeal are not true but that the 1st Respondent instituted Miscellaneous Application No.49 of 2023 seeking for a review of Miscellaneous Cause No.24 of 2022. Counsel finally submitted that the determination of Misc. Application No.49 would render this Application moot.

Submissions in Rejoinder

Counsel argued that the 1st Respondent did not adduce evidence to prove that the order to impound the vehicle came from the Criminal Investigations Department Headquarters in Kibuli. That she did not also adduce evidence to prove that she had been deployed in Gomba District. Counsel also submitted that Miscellaneous Application No.49 of 2023 is incompetent and will not have any effect on the current suit.

Decision of Court

In law, contempt of court is defined as an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it." (see *Principles of Criminal Law* 1 ed (Juta, Cape Town 1991) at 627; *R v. Almon* (1765) 97 ER 94 at 100; *Ahnee and others v. Director of Public Prosecutions* [1999] 2 WLR 1305 (PC); *R. v. Gray*, [1900] Q. B. 36, at p. 40 and *R v. Metropolitan Police Commissioner, Ex parte Blackburn* (No 2) [1968] 2 All ER 319 (CA). Any act of disobedience or disrespect toward the court, or any obstruction of the judicial process, can be considered contempt. The recognition given to contempt is not to protect the tender and hurt feelings of the

judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed.

Wilful disobedience to any judgment, decree, direction, order or other process of a court or wilful breach of an undertaking given to a court or the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) or any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or

Page 4 of 8

tends to obstruct, the administration of justice in any other manner, will constitute contempt of court

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.)
- That there was non-compliance with the order by the Respondent. \$(iii)\$
- That the non-compliance was wilful or malafide. \$(iv)\$

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 the vehicle release order if satisfied that the terms of the release order are clear and unambiguous.

The court order dated 3rd March 2023 issued and marked **Annexure A** to the Affidavit in support states among other orders that;

> The unconditional release of motor vehicle Toyota Wish, Registration No. UBE 010L.
(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 applicant has satisfied this requirement.

2. That the order was served or brought to the notice of the alleged contemnor $\text{\textit{the respondents}}$

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

Page 5 of 8

and another v. Commissioner General Uganda Revenue Authority H. C. Misc. Application No. 42 of 2010)

In the instant case, it is clear on the face of the order issued by the Court on 3rd March 2023 marked as Annexure A to the Affidavit in support of the Application that the 1st Respondent's Advocates were present in court while this order was rendered. This therefore proves that the 1st Respondent was well aware of the said court order.

With regard to the 2nd Respondent, he became aware of the court order through a letter dated 18th April 2023 addressed to his office from the office of the Inspector General of Police marked as Annexure C to the Affidavit in support of the Application. In that letter, the Inspector General of Police attached a copy of the order. The 2nd Respondent was further informed of the said order through a letter dated 23rd May 2023 from Isabirye & Co. Advocates.

These facts are not controverted by the affidavit in reply. I, therefore, find that the Respondents had effective notice of the existence of the clear and unambiguous unconditional release of motor vehicle Toyota Wish Reg. No. UBE 010L.

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).

It is not disputed that the Respondents have not complied with the order of the Court. The Respondents have not intimated anywhere in their affidavit in reply that they actually released the vehicle. Therefore, I find that there was no compliance with the court order.

4. That the non-compliance was wilful or malafide

A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court. A civil contemnor can avoid sanctions if he can show that it is impossible to comply with the court order. For example, a person cannot be held in civil contempt for failing to produce documents that are not in his control. Similarly, an insolvent individual cannot be held in civil contempt for failing to pay a judgment. The burden, however, is placed on the contemnor to prove that he or she cannot obey the court order and

Page 6 of 8

courts generally reject such claims without compelling evidence that compliance is impossible.

The 1st Respondent in her submissions does not in any way come out to justify her failure to comply with the court order. She claims that detention of the vehicle is based on advice from the office of the Director of Public Prosecutions in a letter marked **Annexure B**. The said letter was written on 22nd April 2022 in reference to "Kamuli CRB 1122/2021 Uganda V Ngobi and Others" directing the Director CID among other things to have this vehicle impounded as it was an exhibit in the case. It should be noted that case number "Kamuli CRB 1122/2021 Uganda V Ngobi and Others" was dismissed on 19th May 2022 by H/W Okumu Jude Muwone. So, the question then is, where did the Respondents get the authority to continue with the detention of the suit vehicle?

Be that as it may, the order of this court was clear and it stated;

IT IS HEREBY ORDERED AS FOLLOWS;

- \$1. \quad \ldots \ldots \ldots\$
- 2. The <u>Unconditional release</u> of motor vehicle Toyota Wish, Registration No. *UBE 010L*
- \$3. \quad \ldots \ldots \ldots\$ (EMPHASIS IS MINE)

In making this order, the court was cognizant of the fact that the 1st Respondent had impounded the said vehicle because there was a pending criminal case where the vehicle was an exhibit. The court found that the said case had been dismissed and consequently ordered the unconditional release of the vehicle.

The term unconditional is defined in the Blacks Law Dictionary 9th Edition as;

Unconditional – Not limited by a condition; not depending on an uncertain event or contingency; absolute.

The term unconditional release means that despite the possible conditions that need to be fulfilled, the order should be implemented regardless. Therefore, the order given above was supposed to be effected absolutely without imposing any kind of condition on the Applicant.

In light of the foregoing, I am convinced that the Applicant has engaged the Respondents with regard to the court order and its enforcement. The Applicant equally sought assistance from the Inspector General of Police whose recommendations were not fully implemented by the Respondent. To that

Page 7 of 8

effect, I find that the Respondents are in contempt of the court order issued by this court.

Issue 2: What remedies are available to the parties?

Having found the Respondents to be in contempt of order court thereby denying the Applicant access to his vehicle, the court has no option but to compel the Respondents to release the said vehicle. The court is also cognizant of the fact that the Applicant has incurred resources in pursuit of the release of the vehicle and has also been strained by the process. The court shall therefore award the Applicants general damages of UGX 10,000,000 (ten million shillings.)

Whereas the Applicant prayed that this court orders civil imprisonment for the Respondents, I am hesitant to do so because of the role that the Respondents play in society. The Respondents are Police officers who are tasked with protecting and serving the community. I decline to make an order that will jeopardise the safety of the community. Consequently, I will award a fine of UGX 25,000,000 (twenty-five million shillings) to the Applicant against the Respondents jointly in the event that the car is not released by 30th of May 2024.

IT IS HEREBY ORDERED AS FOLLOWS;

- 1. The Respondents are in contempt of the Court Order dated 3rd March 2023 issued in respect to Miscellaneous Cause No.024 of 2022.
- 2. The immediate unconditional release of the Motor vehicle Toyota Wish with Registration No. UBE 010L
- 3. The Respondents shall pay a fine of UGX 25,000,000 jointly to the Applicant should the car not be released by the 30th of May 2024.
- 4. General Damages of UGX 10,000,000 (ten million shillings) are awarded to the Applicant.
- 5. Costs of the suit are awarded to the Applicant.

I so order.

FARIDAH SHAMILAH BUKIRWA NTAMBI

JUDGE

Delivered on 29th of May 2024

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/2024/615/eng@2024-05-29>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ngobi-v-orishaba-miscellaneous-application-130-of-2023-2024-ughc-615-29-may-2024-unknown-topic-unknown-court-2024--6a3ea4dd3b1caa91297e9c1f>

Prepared on 13 October 2026 · Esheria