

UGANDA / JUDGMENT

Odongo v Oryema (Miscellaneous Application 89 of 2021) [2024]

UGHC 316 (13 May 2024)

[2024] UGHC 316

COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Miscellaneous Application 89 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT GULU (MISC. APPLICATION NO. 089 OF 2021 (Arising from Misc. Application No. 049 of 2021) (Arising from Misc. Application No. 048 of 2021) (Arising from Civil Suit No. 039 of 2010) BEATRICE ACHOLA ODONGO =====
APPLICANT VERSUS

NANCY WISON ORYEMA=====RESPONDENT

BEFORE HON. MR. JUSTICE PHILLIP ODOKI RULING

Introduction:

- [1] The Applicant filed this application, by Notice of Motion, pursuant to Section 98 of the Civil Procedure Act and Order 52 rules 1, 2, 3 of the Civil Procedure Rules, seeking for, the arrest and detention of the Respondent for contempt of the interim order of injunction issued by this Court in Misc. Application No. 049 of 2021; an order that the Respondent pays a fine of Ugx 50,000,000/= for contempt of the Court order; an order that the Respondent pays exemplary/punitive damages or compensates the Applicant of Ugx 100,000,000/= for contempt of court order; and the costs of this application be provided for.

Background of the application:

- [2] The Respondent and 3 others instituted High Court Civil Suit No. 039 of 2010 against the Applicant and 3 others alleging, **inter alia**, that the Applicant fraudulently purchased 3,700 acres out of land comprised in LRV 778 Folio 23 land at Purongo, Nwoya District (hereinafter referred to as 'the suit land') which is property belonging to the estate of the late Lt. Col. Wilson Erenayo Oryema. They sought for, **inter alia**, a declaration that the Applicant is a trespasser on the suit land.
- [3] The Applicant filed her Written Statement of Defense in which she denied the allegations in the Plaint. She filed a counterclaim against Mary Onen, Elizabeth Atim Oryema, Gertrude Auma Oryema and the Administrator General contending that she is a lawful and bona fide purchaser for value without notice of the 3700 acres. She further contended that after purchase of the 3,700 acres of the suit land, Mary Onen and Elizabeth Atim Oryema trespassed on the 3,700 acres and disrupted her activities thereon. She sought for, *inter alia*, a permanent injunction to restrain the Defendants from trespassing on the 3,700 acres.
- [4] On the 2nd of June 2021 the Applicant filed High Court Misc. Application No. 048 of 2021 against the Respondent and 3 others, alleging that the Respondents had, trespassed on parts of the 3700 acres with the aid of armed policemen with the intention of evicting her from the land; began to forcefully demarcate the 3,700 acres; began erecting permanent and temporary structures on the land; began massive cultivation of the land; started to look for buyers for the land; and started to rent the land without her consent. The applicant sought for an order to maintain the status quo of the land pending the determination of High Court Civil Suit No. 039 of 2010.
- [5] On the same day (2nd of June 2021) the Applicant filed High Court Misc. Application No. 048 of 2021 against the Respondent in which she made similar allegations in High Court Misc. Application No. 048 of 2021 against the Respondent. She sought for an interim order of injunction to maintain the status quo of the land pending the determination of High Court Misc. Application No. 048 of 2021.
- [6] High Court Misc. Application No. 048 of 2021 was heard by Registrar of this court. On the 21st July 2021, he delivered his ruling granting the Applicant an interim order to preserve the status quo of the 3700 acres pending the hearing of High Court Misc. Application No. 048 of 2021. The order which was extracted by counsel for the Applicant reads as follows:

"IT IS HEREBY ORDERED AND DECREED AS FOLLOWS: -

- *1. That an interim order of injunction doth issue restraining the Respondents and their agents, relatives, workmen or any person deriving any interest from them from further trespassing, evicting, intimidating, fencing, demarcating boundary, arresting, renting out, selling, erecting houses or temporary structures, cultivating, alienating and/ or in any other way dealing with the suit land comprised in Pabit West Village, Pabit Parish, Purongo Sub – County, Nwoya District measuring approximately 3,700 acres which forms part of LRV 778,

Folio 23, land situated at Purongo in the County of Kilak, Acholi a lease of 99 years from 1st January 1969 that will affect the interest of the Applicant until the determination of the Mian Application for temporary injunction or until further orders of the Court.*

- *2. That the costs of this Application shall be in the cause."*

The Applicant's case:

- [7] The grounds of this application are contained in the Notice of Motion, the affidavits of the Applicant (in support of the application and in rejoinder), the affidavit of Okot Solomon and the affidavit of Guru Sigh. The gist of the Applicant's case is that immediately after purchasing the 3,700 acres in 2013, she gained full possession of the entire land. She started carrying out massive cultivation and settlement on the land, save for a small portion of the land that the Respondent had started encroaching on in late 2021 giving rise to the application for the interim order. After this Court delivered a ruling in High Court Misc. Application No. 048 of 2021, her lawyers extracted an order in line with the application and the order of the Court. After the interim order was issued by this Court, the Respondent acted in contempt of the interim order of this Court by, leasing out over 750 acres of the suit land to NR Agro Ltd and 450 acres to small farmers groups to grow rice; destroyed her (the Applicant's) structures on the suit land; broke into the her container; evicted all her workers; destroyed her boundary fence and signage; continued to trespass on the suit land with the aid of counter terrorism police; together with police officers, violently assaulted, arrested and detained her workers; and stopped her workers from using the suit land. The Applicant attached some pictures in support of her case.

The Respondent's case:

- [8] The Respondent deponed an affidavit in reply opposing the application and denied all the allegations in the application. She stated that on the 21st July 2021, this Court delivered a ruling in High Court Misc. Application No. 048 of 2021 preserving the status quo pending the determination of the main application for a temporary injunction. Instead of extracting an order that reflects the ruling of the Court, the Applicant's Counsel unilaterally extracted an entirely different order. Armed with the wrong order, the Applicant who was in possession of 500 acres of the suit land, started to expand her possession by evicting her (the Respondent) and her agents from the suit land; brought 3rd parties on the suit land; cut indigenous trees on the suit land; vandalized and destroyed the property of the Erenayo family. She deponed that the action of the Applicant prompted her (the Respondent) to complain to Uganda Police. The Applicant and her agents were rightfully arrested and charged of trespass and malicious damage to property. She deponed that NR Agro were in possession of the suit land since 2018 before the interim order was issued. She further deponed that assault, if any, is a criminal offence not related to the alleged contempt of Court order.

Legal representation:

- [9] At the hearing of this application, the Applicant was represented by Mr. Douglas Odyek of M/s Kunihiro & Co. Advocates; Mr. Ambrose Tebyasa of M/s Ambrose Tebyasa & Co Advocates; and Mr. Walter Okidi Ladwar of M/s Ladwar, Oneya & Co. Advocates. The Respondent was represented by Mr. Paul Idambi and George Adupa of M/s Cumberland Advocates.

Legal Submissions:

- [10] Counsel for the Applicant submitted that the Applicant adduced evidence that on the 23rd July 2021 the Respondent with the aid of her agents and police officers broke into the Applicant's container, evicted all the workers of the Applicant from the camp, destroyed boundary fences and signages, leased land to NR Agro Limited and alienated part of the land contrary to the interim order. According to counsel, the breaking of the signage of the Applicant was witnessed by Okettayot Chrispus.
- [11] Counsel further submitted that the Applicant also adduced evidence that on the 12th August 2021 the Respondent and her police guards violently assaulted the workers of the Applicant (Okot Solomon and Okello Solomon) for cultivating on the suit land, arrested them, and they were detained at the police for one night before release. According to counsel, the arrest was to cause intimidation contrary to the court order.
- [12] In addition, counsel submitted that the Applicant adduced further evidence that on the 24th August 2021 the Respondent again, with her police bodyguard, arrested the Applicant's workers for using the suit land and reported a case of malicious damage to property whereas nothing like that took place. The Applicant's workers were detained at the police station for two days, but the file was closed by the Regional State Attorney.
- [13] Counsel argued that the contention of the Respondent that the order is different from the ruling is not sustainable since the order flows from the application and the ruling of the Court. In addition, counsel submitted that a party who knows an order, regardless of whether, in view of that party, the order is null and void, regular or irregular, cannot be permitted to disobey it by reason of what that party regards the order to be. It is not for that party to choose whether or not to comply with such an order.
- [14] In reply, counsel for the Respondents submitted that the Respondent does not dispute the existence of the court order and awareness of the existence of the court order. Their argument was that the Respondent did not disobey the court order. Counsel submitted that the 3,700 acres of land claimed by the Applicant was not subdivided nor demarcated from the 6,000 acres of the suit land. The boundaries of the 3,700 acres was not known to both parties. According to counsel for the Respondent, the Applicant should have hired the services of a surveyor to clearly mark out the boundaries of the 3700 acres in order to ease the implementation of the order.

- [15] Counsel further submitted that the alleged workers of the Applicant were arrested for committing criminal offences by Uganda Police Force and were released on police bond which shows that investigations in their case is still ongoing.
- [16] Counsel for the Respondent argued that the pictures which were relied on by the Applicant do not meet the test of admissibility under the *Electronic Transactions Act.* They were taken by unknown persons and from unknown places.

Analysis and determination of the Court:

- [17] I have had the benefit of reading the application and the affidavits in support and against the application. I have also had the benefit of considering the submission of counsel for the Applicant and the Respondent on the matter. The law on contempt of court is fairly settled. In *R. versus Gray [1900] 2 Q. B. 36* at 40 contempt of court was defined in as:

"any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a Contempt of Court."

- [18] In *Morris versus Crown Office [1970] 1 All ER 1079 AT 1087* Salmon L. J., stated the essence or purpose of contempt proceedings. He stated that:

"The sole purpose of the proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

[19] In *Andre Paul Terence Ambard Appeal No. 46 of 1935 v. The Attorney General of Trinidad and Tobago (Trinidad and Tobago) [1936] 1 All ER 704* Lord Atkin observed that:

"It may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of Justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

[20] According to *Halsbury's laws of England, Contempt of Court (Volume 9(1) Reissue)* there are two forms of contempt of court. It states as follows:

"Contempt of Court may be classified as either (1) Criminal Contempt, consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced; or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgement, orders or other process of Court and involving a private injury."

[21] In *Betty Kizito versus Dickson Nsinga and 6 others* Supreme Court Civil Application No. 25 and 26 of 2016* the Supreme court cited the above except of *Halsbury's laws of England** and the Supreme court of Canada in the case of *Poje versus Attorney General of British Colombia**

[1953] 1 SCR 516 where the two categories of contempt of court were distinguished and had this to say:

"It is thus clear that criminal contempt takes place when the contemnor interferes with court's ability to function properly. It may take the form of yelling at the judge presiding over a case, insolvent language, assaulting persons in the courts (court officers or not) etc."*

**Civil contempt on the other hand, occurs outside the court's close realm. It usually takes the form of disregarding court orders and judgement. This, therefore, means that civil contempt must be brought to the court's notice the conduct alleged to constitute the contempt of court."*

[22] The instant application before me involves conduct that is alleged to have occurred outside the realm of the Court. The allegation against the Respondent is that she disobeyed the orders of this Court in High Court Misc. Application No. 048 of 2021. This case therefore falls under the classification of a civil contempt.

[23] In *Betty Kizito versus Dickson Nsinga and 6 others** (supra), the Supreme Court set out the elements that must be proved by any complainant of contempt of court. First, existence of a valid order. Where a valid order exists, it must be obeyed in totality. A party who chooses to disobey the order without good reasons risks being held in contempt. Second, the Court order must state clearly and unequivocally what should and should not be done. The court will be reluctant to punish or condemn an alleged contemnor for an order whose terms are unclear and ambiguous. Third, the alleged contemnor must have actual knowledge of the court order. Common law leans towards the requirement of personal service or actual knowledge of the existence of the court order. In some instances, knowledge of the court order may be inferred even in cases of willful blindness. Fourth, the alleged contemnor must have intentionally done that act that the order prohibits or intentionally failed to do the act that the order compels. There is need for proof beyond reasonable doubt of the alleged contemnors deliberate conduct that has the consequence of disobeying the court order in issue. The applicant is however not required to prove that the alleged contemnor intended to bring court in disrepute. Also, where the breach of the order is unintentional

and accidental then the court may exercise the discretion to impose no penalty.

- [24] The Supreme Court went on to add that even where the applicant satisfies all the aforementioned elements required to prove civil contempt, a court entertaining contempt proceedings still possesses the power to decline to make a finding of contempt where the alleged contemnor shows that he or she acted in good faith and was taking reasonable steps towards compliance with the order since the remedy of contempt is a "last resort" and shall be used with great restraint. The court cited with approval decision of the Supreme Court of Canada in **Carey versus Laiken 2015 SCC 17** where Cromwell J., held that:

*"If contempt is found too easily, a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judgment power it seeks to protect." [...] As this court has affirmed, "contempt of court cannot be reduced to a mere means of enforcing judgments..."**

- [25] In the instant case, counsel for the Respondent submitted that the Respondent does not dispute the existence of the court order and awareness of the existence of the court order. The Respondent however took issue with the order itself on the account that the suit land is 6000 acres and yet there was no demarcation of the 3,700 acres claimed by the Applicant, making the enforcement and compliance of the of the order difficult. Counsel for the Respondent submitted that the order did not define the boundary of the 3,700 acres from the 6000 acres of the suit land making it complex for both parties to comply with the court order. Counsel for the Applicant did not make any contrary argument in that regard.

- [26] I agree with counsel for the Respondent that the court order which is the subject of this application, the terms are unclear and ambiguous. The Applicant having alleged that she purchased 3,700 acres out of the suit land which is 6,000 acres, the Court should have demanded for evidence from the Applicant, in High Court Misc. Application No. 048 of 2021, to prove the physical location of the 3,700 acres. Evidence such as survey maps should have been obtained or the court should have commissioned a survey of the 3,700 acres so that the parties would be very clear on the exact location of the land which was the subject of the order. This was not done. Given the unclear and ambiguous order, it is completely impossible to tell whether there was any contempt or not, whether the Respondent intentionally trespassed on the 3700 acres where she was prohibited by the court and whether the acts of the Respondent was in good faith or not.

- [27] Although the Applicant relied on some photos to prove acts of contempt of court order, the photos have come under attack for not meeting the test of admissibility under the Electronic Transactions Act. The position of the law on electronic evidence in legal proceedings in Uganda has been settled by **The Electronic Transactions Act, 2011** and **The Electronic Transactions Regulations, S. I. 42 of 2013.** Before any data message or electronic record is admitted in evidence and evidential value is attached to it, proof of its authenticity has to be established by the court. The burden of proof lies on the person seeking to introduce electronic evidence in legal proceedings, to prove the authenticity of the electronic

evidence. Proof of authenticity is by way of adducing evidence capable of supporting the finding that the data message or electronic record is what the person seeking to introduce it in evidence claims it to be. See Section 8(2) of *The*

Electronic Transactions Act, 2011.

- [28] In order for a data message to be regarded as authentic, under Section 7 of *The Electronic Transactions Act, 2011*, the information must have integrity from the time when it was first generated and the information must also be capable of being displayed or produced to the person to whom it is to be presented or it must have remained complete and unaltered (except for addition of endorsements and any change which arises in the normal course of communication, storage or display) in light of the purpose for which the evidence was generated and having regard to all relevant circumstances.
- [29] According to Regulation 3(1) of *The Electronic Transactions Regulations, S. I. 42 of 2013*, where the authenticity of the electronic evidence is in issue, it has to be proved by evidence showing that; The data message is self-authenticating, the electronic evidence has a hash mark or metadata, there is factual specificity about the process by which the information is created, acquired, maintained and preserved, among others. Under Regulation 3(2), there has to be evidence that the person uses the computer from which the message originated, that the computer is reliable, that the person has developed a procedure for inserting data into the computer and that the procedure has in built safeguards to ensure accuracy and identify errors.
- [30] Under regulation 7, the integrity of a data message must be assessed by; the mode of preparing the data, programming error, completeness of the data entry, mistake in output instructions, damage and contamination of the storage media, power outages and equipment malfunctions, improper search and retrieval techniques, data conversion or mishandling during discovery, that the computer used retaining and retrieving information.
- [31] It appears to me, from the above cited provisions of the law, that before any electronic evidence can be admissible in evidence, the court must establish its authenticity. Authenticity of a data message is established if the data message has remained complete or unaltered from the time when it was first generated. In ascertaining whether the data message has remained complete or unaltered, the court must have regard to; the process by which the information was created, acquired, maintained and preserved; the reliability of the computer used; the competency of the person who has created, acquired, maintained, preserved and retrieved or converted the data to avoid any loss. The list is by no means exhaustive.
- [32] The rationale for establishing the authenticity of electronic evidence/ digital evidence is that digital evidence can be easily created, tampered with or modified. See the case of *Coin Limited versus Attorney General, HCCS No. 799 of 2014.* According to *Stephen Mason, Electronic Evidence, 3rd Edition* at page 48 the authors state that:

"... the media upon which electronic data are stored is fragile. The media is inherently unstable, and unless the media is stored correctly, it can deteriorate quickly and without external signs of deterioration. It is also at risk from accidental or deliberate damage and accidental or deliberate deletion. Furthermore, the form of storage media also changes."

[33] Therefore, just because digital evidence is found, it does not follow that the evidence is genuine. The court has to be meticulous in determining authenticity of electronic evidence before admitting it in evidence.

[34] In the instant case, Guru Sigh deponed that he took the photos using his phone which is a Samsung A 50 S, which has been in his possession since 2020. According to him, the phone has a good camera with timestamp and storage capacity. He deponed that he took the photos on the 28th July 2021; 8th August 2021; and 12th August 2021. He stored the pictures in the phone without any alteration or editing on his own behalf, used USB cable of his phone to transfer the photographs to his laptop vide Tinkpad core 15 ten generation and printed the colored photos out and gave them to the Applicant on the 27th August 2021 to attach to her application.

[35] I have examined the photos attached to the affidavit of the Applicant, among the photos, one photo bears a timestamp of 25th May 2021 contrary to the allegation of Guru Sigh. In addition, merely asserting that he did not alter the pictures is not enough. The Applicant should have adduced evidence of the meta data of the electronic evidence (the photos) which would show the time the pictures were taken, location and using which electronic gadget. It would also prove that the identity of the picture never changed from the point when it was created up to the time when it was produced to the court. I therefore agree with counsel for the Respondent that the photos do not pass the test of admissibility under the Electronic Transactions Act.

[36] Be that as it may, the Court is not in any position to confirm whether the pictures were actually taken from the 3,700 acres claimed by the Applicant or not. The Applicant did not, at the time of seeking the interim order, availed to the court the pictures of the land and the activities she was carrying out on the suit land to prove to the Court the status quo that she sought to be maintained. That would have assisted the court compare with the status quo after the order was issued to prove any acts of contempt of the order of this court.

[37] In addition, the Applicant complained that the Respondent, with the aid of counter terrorism police violently assaulted, arrested and detained her workers. The Respondent on the other hand deponed that the agents of the Applicant cut indigenous trees on the suit land, vandalized and destroyed the property of the Erenayo family. It is those acts that prompted her (the Respondent) to complain to Uganda Police. In my view, the court order was not issued to shield the Applicant and her agents from committing criminal offences or intended to prevent the police from the carrying out their constitutional mandate under Article 212 of the *Constitution of the Republic of Uganda, 1995* and Section 4 of the *Police Act Cap 302*. Therefore, if the agents of the Applicant were arrested by the police without

any suspicion of having committed or being about to commit any recognizable offence, the proper step to be taken by the complainants was to file an application for human rights violations under the Human Rights Enforcement Act, 2019 or a suit for the tort of illegal arrest and unlawful detention, instead of this application for contempt of court.

[38] In the end, I find that this application has no merit. It is accordingly dismissed with costs to the Respondent.

I so order.

Dated and delivered by email this 13th day of May, 2024.

Phillip Odoki

Judge.

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