

UGANDA / JUDGMENT

Omiat v Serere District Local Government and Others (Miscellaneous Application No. 161 of 2022) [2022] UGHCCD 291 (14 April 2022)

[2022] UGHCCD 291**COURT**

HC: Civil Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application No. 161 of 2022

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The Republic of Uganda In the High Court of Uganda Holden at Soroti Miscellaneous Application No. 161 of 2022 *(Arising from Civil Suit No. 010 of 2016)*

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Omiat Moses :::::::::::::::::::: 10

Versus

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1. Serere District Local Government

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3. Ejanyu Stephen:

2. Atingu Joseph

4. Okoja Sostine

5. Olinga Calvin

Before: Hon. Justice Dr Henry Peter Adonyo**Ruling**

1. Introduction:

- This application was brought by way of a Notice of Motion under Article 25 \$126(2)(a)(b)\$ and (c), \$128(2)\$ and (3) and \$23(1)\$ of the Constitution of the Republic of Uganda, 1995 (as amended), Section 14(1), 14(2) (a) and 33 of the Judicature Act, Cap 13; Section 98 of the Civil Procedure Act, Cap 71 and Order 52 Rules 1 and 3 of the Civil Procedure Rules SI 71-1 for orders that; 30
- a) The respondents be found in contempt of the decree in Civil Suit No. 010 of 2016: Omiat Moses vs Serere District Local Government and 4 Ors.

- b) The \$2^{\text{nd}}\$ to \$5^{\text{th}}\$ respondents be committed to civil prison for contempt of court.
- c) An order of sequestration doth issue attaching and placing the respondents' property under sequestration until they have purged themselves of the contempt of the decree in Civil Suit No. 010 of 2016.
- d) An injunction doth issue restraining the respondents from continuing with contempt of the decree in Civil Suit No. 010 of 2016.
- e) The respondents be ordered to pay to the applicant UGX 1,000,000,000 (One Billion shillings) as exemplary/punitive damages for contempt of court / decree in civil suit No. 010 of 2016.
- f) The respondents be jointly ordered to pay a fine of UGX 500,000,000 (five hundred thousand Only) for their contempt of court/decreed in Civil Suit No. 010 of 2016.
- g) The costs of this application be borne by the respondents.
- The grounds of the application are set out in the application but are better highlighted in the supporting affidavit deposed by Omiat Moses, the applicant herein, that;
- a) There is an existent Decree of the High Court in Civil Suit No. 010 of 2016: Omiat Moses versus Serere District Local Government and 4 others, by which a permanent injunction was issued against the respondents, restraining them from further interferences and disturbance of the applicant's quiet enjoyment of the suit land.
- b) The respondents have actual knowledge of the court order and are dissatisfied with the same for which they have filed notices of appeal.
- c) The respondents have failed and refused to comply with the decree/court order.

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- d) The 1st respondent has with full knowledge about the permanent injunction willfully violated / disobeyed it by cutting down trees on the suit land every week to create market stalls on it, operating a market on the suit land every Tuesday (market day) from which it derives revenue, continuously using the suit land as a garbage dump and a land-fill for non-biodegradable materials resulting from the market.
- e) The 2nd to 5th respondents and their agents have after the court delivered its judgement expanded their areas of trespass on the suit land; cut down trees on the suit land from which they have derived logs for timber and burned others for charcoal on the suit land as well as making and burning bricks on the suit land.
- f) It is just and equitable that the respondents be held in contempt of the court, be punished and penalized for their contempt and their property be sequestered until they purge themselves of their contempt of the decree in Civil Suit No. 010 of 2016.

The application was opposed by the respondents in their affidavits in reply; thus;

For the 1st respondent, Richard Bukone Sajjabi, the Chief Administrative Officer of Serere District Local Government deposes that;

- a) I am well conversant with the contents in HCMA No. 161 of 2022 and High Court Civil Suit No. 010 of 2016 wherein the Hon. Justice Dr Henry Peter Adonyo entered judgment against the respondents in favour of the applicant.

whole the with aggrieved respondent was 1st b) The decision/judgement and orders in HCCS No. 010 of 2016 for which it filed a notice of appeal at the High Court of Uganda at Soroti and

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in the Court of Appeal at Kampala and the same was effectively served onto the applicant's counsel.

- c) The 1st respondent also vide HCMA No. 134 of 2022 filed an application for a stay of execution of the orders issued in HCCS No. 10 of 2016.
- d) The applicant has never served the respondents with the decree in HCCS No. 10 of 2016.
- e) The 1st respondent is a local government and a local government cannot cut down trees for the construction of market stalls.
- f) If the orders in this application are issued/granted, the appeal in the Court of Appeal which has a high likelihood of success, shall be rendered nugatory.

For the 2nd to 5th respondents, they deposed that;

- a) We have not contravened any of the orders in the court's judgement in HCCS No. 010 of 2016.

- b) Immediately after the judgment was delivered, we filed a notice of appeal to the High Court at Soroti and a memorandum of appeal in the Court of Appeal.
- c) We filed a stay of execution of the orders in HCCS No. 010 of 2016 vide HCMA 113 of 2022 which are pending before the court.
- d) By the time the judgement in HCCS No. 010 of 2016 was delivered, we were in possession of part of the suit land and we have not gone beyond that nor have we put it to any other use.
- e) Since the judgment was delivered, the applicant has never been put in vacant possession of the suit land.
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- f) The applicant's application is premature.

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2. Representation:

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The applicant herein was represented by M/s Kania & Alli Advocates & Solicitors while the 1st respondent was represented by the Attorney General's Chambers, Soroti Regional Office and the 2nd to 5th respondents were represented by M/s Ogire and Company Advocates.

The Applicant and the 1st respondent filed written submissions. The rest 10 of the respondents did not. The applicant rejoined the submissions of the 1st respondent. Counsels for either side are thanked for the efforts in coming up with their spirited submissions which I have taken into account while coming up with this ruling.

3. Issues : 15

- a) Whether the respondents are in contempt of the court orders issued vide HCCS No. 010 of 2016?
- b) What remedies are available to the parties in the circumstances?
- 4. Resolution:
- The applicant is invoking Section 98 of the Civil Procedure Act, Cap 71 20 which is the legal regime which provides for the inherent powers of the court. By the provisions of the said law, this court's powers in making such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

- The applicant in summary is seeking orders of this court on the basis that 25 the respondents, who are aware of some orders of this court, have and continue to violate the same and thus should be cited with contempt of court and made to suffer the consequences of such violation.

I shall deal with the request of the applicant based on the two (20 issues framed as below.

Whether the respondents are in contempt of the court orders \$(a)\$ issued vide HCCS No. 010 of 2016?

The Law on Contempt of Court: i.

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Contempt of court refers to behaviour that takes place during, or in connection with, legal proceedings that prejudices or impedes the administration of justice or creates a real risk of that happening. Examples of contempt of court include deliberately breaching a court order, taking, and publishing photographs in court, and publishing information that could prejudice a trial.

'Contempt of court' happens when someone risks unfairly influencing a court case. It may stop somebody from getting a fair trial and can affect a 15 trial's outcome.

Contempt of court includes:

- disobeying or ignoring a court order.
- taking photos or shouting out in court.
- refusing to answer the court's questions if you're called as a witness.
- publicly commenting on a court case, for example on social media or online news articles.

If you are found to be in contempt of court, you could go to prison get a fine, or both.

Contempt of court is not a criminal offence, even though it is punishable 25 by imprisonment.

Court orders can be imposed by a judge in legal proceedings and breaching them can amount to contempt of court or a criminal offence. Breaching an order imposed during civil proceedings, can amount to contempt. It is

expected that the parties themselves will inform the court of the breach 30 and start contempt proceedings.

In only a very limited number of cases where a party is either unable to $\$S\%$ start contempt proceedings, or there is a significant public interest involved then the law officers may start proceedings.

The position of the law is that for contempt of court to be found, the following conditions must exist; a lawful order, the potential contemnor's knowledge of the order and the potential contemnor's failure to comply i.e. disobedience of the order.

See: Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd v\$ The Commissioner General Uganda Revenue Authority MA \$42/2010.\$

Section 98 of the Civil Procedure Act, Cap 71 provides the High 15 Court with inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The Constitution of the Republic of Uganda, 1995 also confers upon the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law. (see Article 139 (1) of The Constitution of the Republic of Uganda, 1995).

The High Court is commanded to exercise its jurisdiction in conformity with the common law and doctrines of equity where by its obliged to exercise its discretion in conformity with principles of Justice, equity and good conscience respectively. See Sec.14(2) (b) (1) and 14(2) (c) of the

Judicature Act.

This application relates to contempt of court and Justice Kiryabwire of the Court of Appeal of Uganda, in the case of *Uganda Super League V*

Attorney General Constitutional Application No. 73 of 30 2013 while citing the Black's Law Dictionary 7th Edition defined contempt of court as the "conduct that defies the authority or dignity of the court."

Halsbury's Laws of England [Volume 9, 4th Edition] classifies S contempt of court in two categories, that is;

- Criminal contempt which is committed by words or acts that impede Administration of justice and,
- Civil Contempt which arises when there is disobedience to judgment, orders or other court process and involves private jury.

Accordingly, any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its wicked influence beyond the parties to the action and affects the interest of the public in the administration of justice is contempt of court.

The rationale is around the preserving and safeguarding the rule of law so 15 that a party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

The position of the law is that for contempt of court to be found against any party or person, the following conditions must exist;

- a. there must be a lawful order,

- b. the potential contemnor has knowledge of the order and;
- c. the potential contemnor's failure to comply i.e. disobedience of the order
- See: Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd v The 25 Commissioner General Uganda Revenue Authority HCMA 42 of 2010.

The standard of proof in contempt proceedings is higher than proof of probabilities and almost but not exactly beyond reasonable doubt.

See: Hon. Sitenda Ssebalu versus Secretary General of the East 30 African Community No.8 of 2012

In the persuasive decision of **Re Contempt of Dougherty 429**, *Michigan 81, 97 and [1987]*, the holding of the court was that;

"... imprisonment for civil contempt is properly ordered where the Defendant has refused to do an affirmative act by the provisions of an order, which either in form or substance was mandatory in character."

Further in the same above case, it was pointed out that;

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"...if the contempt consists in refusal of a party to do $\frac{1}{2}$ something which he is ordered to do for the benefit and advantage of the opposite party.... The Contemnor stands to be committed until he complies with the order. The order in such a case is not a punishment but is coercive to compel the Contemnor to act in accordance with the order of court."

The position of the court in the case of **Hon Sitenda Ssebalu v Secretary General of the East African Community EACJ Reference No.8 of 2012** is thus that for contempt of court to be found, the following principles have to be established: -

- a) Existence of a lawful order.
- b) Potential contemnor's knowledge of the order.
- c) Potential contemnor's failure to comply, that is, disobedience of the order.

a) Existence of a court Order: 25

> In respect of the instant matter, the affidavits on file and the entire record of proceedings have been perused. Annexures A and B of the affidavit in support of the application show that this court issued court orders against the respondents jointly and severally in HCCS No. 010 of 2016. The certified court order which is the subject of this suit is provides thus;

IT IS HEREBY DECREED AND ORDERED that:

(a) *The suit is found to have merits.*

- (b) The plaintiff is hereby declared as the customary owner of a block of land comprised of approximately 150 acres situated at Kasilo village, Kamod parish, Bugondo sub county, Serere district which was owned by the late George William Amolo, the father of the plaintiff who inherited from Edieku both of whom are since deceased.
- (c) The plaintiff is awarded UGX 200,000,000 as general damages as against the defendants jointly to be paid in equal amounts.
- (d) The plaintiff is awarded UGX \$70,000,000\$ as against the 1st defendant as compensation for the commercial value of the trees cut down by the 1st defendant which converted the same to its use thus unlawfully enriching itself from the proceeds of the cut trees which are of high value.
- (e) The plaintiff is awarded as against the defendants UGX 50,000,000 as exemplary damages to be paid in equal amounts
- There is hereby issued a permanent injunction against the (f) defendants jointly severely restraining them and their agents from further interferences and disturbance of the plaintiff's quiet enjoyment of the suit land.
- (g) I also award interest at the rate of 18% per annum on (c) and (e) above from the date of the judgement till payment in full and on (d) above from the date of filing of the suit till payment in $\frac{d}{dt}$ full.
- (h) The plaintiff is awarded costs of the suit.

According to a decree dated 13th July 2022 which is attached to the applicant's affidavit in support as annexure "B", the above quoted orders in HCCS No. 010 of 2016 were given by this Honourable Court by His Lordship Hon. Justice Dr Henry Peter Adonyo, the Resident Judge Soroti

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- High Court Circuit, in the presence of Mr Emmanuel Twaribereho S together with Mr Ogire Gabriel for the 2nd, 3rd, 4th and 5th defendants, Mr Emmanuel Orono jointly with Mr Ojok Julius for the plaintiff, Mr Gabriel Otiira-Principal Assistant Secretary for the 1st defendant and in the absence of the plaintiff.
- The court presided over by Hon. Justice Dr Henry Peter Adonyo, 10 additionally rejected two applications for stay of execution in respect of orders in HCCS No. 010 of 2016 vide this court's decisions as found in HCMA No. 134 of 2022, in respect of the 1st respondent; and in HCMA 134 of 2022, in respect of the 2nd - 5th respondents.

- It should be recalled that in the above referred applications for stay of 15 execution, which were disallowed, in the 1st application by the 1st respondent herein, the 1st respondent cites this court's order delivered on 15th June 2022 with Mr Gabriel Otiira, a Principal Assistant Secretary of the 1st respondent, averring in an affidavit in reply paragraph 11 on behalf of the 1st respondent that the applicant had never been served with the 20

decree in HCCS No. 10 of 2016.

On the other hand, the 2nd-5th respondents in their affidavits in reply to this application do not rebut existence of the court order in line with the case of **Massa vs Achen* [1978] HCB 297* where it was held that "...where facts are sworn in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted."

Arising from the affidavit evidence of the applicants and my further perusal of all matters relating to this application, I would find conclude that it is true that this court issued orders and decree in HCCS No. 10 of 2016.

Accordingly, it is the finding of this Honourable Court that there exists a court order in respect of HCCS No. 010 of 2016 in which all the parties in this instant application have information of.

Accordingly, the first ground that there was an existing court order is proved.

b) Potential contemnor's knowledge of the order:

The second ground for consideration is whether the respondents had knowledge of the court orders.

As stated in the case of **Housing Finance Bank Ltd & another v* Edward Musisi M. A 58 of 2010*, the Court of Appeal held that;

"... the general principle is that a person cannot be held in contempt without knowledge of a court order. However, a party who knows of an order regardless of whether, in view of that party, the order is null or valid, regular or irregular; cannot be permitted to disobey it by reason of what that party regards the order to be as it is not for that party to choose whether or not to comply with such an order. The order must be complied with in totality."

(Emphasis mine)

In respect of this aspect, the applicant contended under paragraph 4 of his affidavit in support that; 25

"The respondents have actual knowledge of the court order and are dissatisfied with the same for which they have filed notices of appeal."

The applicant then went ahead and attached the notices of appeal to his affidavit in support of this application and they are marked as "C" and 30 "D", respectively.

The respondents each make reference in their affidavits of notices of appeal filed in this court and at the Court of Appeal of Uganda.

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This above is added to the fact that counsel of the \$2^{\text{nd}}\$ - \$5^{\text{th}}\$ respondents were \$ \mathsf{S} \$ in court at the time the decree was made and also the 1st respondent was represented by its then Principal Assistant Secretary, -Mr Gabriel Otiira. Whereas an affidavit of service of the order is the best form of actual knowledge, the averments herein above indicate that the respondents have actual knowledge of the order and also the respondents used them in 10

the attached notices of appeal marked "C" and "D". According to Order 5 rule 16 of the Civil Procedure Rules, proof of service of summons is by an affidavit of service, and this must state the time when and the manner in which summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery of summons.

More appropriately, Order 49 rule 2 of the Civil Procedure Rules provides that all orders, notices and documents required by the Act to be given to or served on any person, shall be served in the manner provided for the service of summons. Proof of knowledge of the court Order can only be by way of proof of service as provided for by the rules of civil procedure.

The above be as it may, this court is required to be satisfied that indeed the respondents did/did not have knowledge of the court order.

In *Muriisa Nicholas v Attorney General HCMA No. 35 of 2012*, 25 (unreported), Hon. Justice Mr. Bashaija K. Andrew observed that;

"...the whole essence of litigation as a process of \$ \mathcal{L} \$ judicial administration is lost if orders issued by the court through the set judicial process, in the normal functioning of courts, are not complied with in full by those targeted and/or called upon to give due

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 effect."

A state organ, or agency or a person legally and duty bound to give due compliance must do so. Court orders cannot be issued in vain."

This court is obliged to preserve its sanctity by prohibiting any further contempt of its orders as court orders are not issued in vain.

However, I would, with respect, distinguish the holding by my learned 10 brother, the Hon Justice Bashaija K. Andrew in **Muriisa Nicholas v* Attorney General HCMA No. 35 of 2012*, and state that the provisions of Order 49 rule 2 of the Civil Procedure Rules appears mandatory for provides that an applicant must prove that the orders, notices and documents have been served in the manner provided for the 15 service of summons as proof of knowledge of the court order.

By using the word "shall" in that law, it is my considered opinion that the legislature intended that proof of service in such situations can only be as provided for by the rules of civil procedure.

Accordingly, the applicant is required to show proof that not only did he 20 extract the impugned court orders and decree but did serve it onto the respondents in accordance with the provisions of Order 49 rule 2 of the Civil Procedure Rules which require the opposite party to have been served with the court orders by way of extracting the same, serving them onto the respondents and then filing an affidavit of service thereof. 25

By doing so, nobody, especially the court is left guessing.

In this instant application, I find that the applicant is relying on conjectures but not proof of service given the fact that though a court has the power to punish an offending party for contempt of its orders such

powers which is reposed in the inherent special jurisdiction of a court and 30 which is intended for the protection of the public interest in the proper administration of justice must be exercised judiciously.

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- That is the position which was observed by Lord Atkin in **Andre Paul* S Terence Ambar Appeal No. 46 of 1935 v. The Attorney General of Trinidad and Tobago (Trinidad and Tobago) [1936] 1 All ER 704, [1936] AC 322* in which the learned judge was of the opinion, which I agree with, that while every judicial officer presiding over court proceedings has the power to punish for contempt, such contempt that is 10 not committed in the face of the court which is sui generis and which is usually initiated by a litigant by a motion, any person who moves the machinery of the court for contempt can only do so where such a person has properly satisfied all the legal requirements such as those provided for by Order 49 rule 2 of the Civil Procedure Rules. 15
- This is because contempt proceedings are not in the nature of criminal proceedings and so it is open to the court, in the interest of the justice of the matter, to satisfy itself that the proper procedures have been followed because it should be recalled that even where a contemnor is found to be
- guilty of contempt, a court may at the least may accept an apology from a 20 contemnor and even discharge him or her, making this peculiar feature to distinguish contempt proceedings from criminal proceedings.

In regard to the instant case, while by conjectures it would appear that that the respondents are aware of this court's orders as per the attached

- documents which are in support of this application, I would hold it that it 25 is incumbent the applicant to satisfy this court that the said orders which the applicant alleged to have been contempered upon have previously been extracted and served upon the respondents in accordance with the provisions of Order 49 rule 2 of the Civil Procedure Rules.
- This is not the case here as no such proof has tendered on court record 30 which would be by way of an affidavit service. Invariably, since there is a clear line of distinction between proceedings for contempt initiated by the court on its own motion, and those initiated
- as civil contempt by the motion of a private litigant, equity would require 5 that a party that alleges a contempt of a court order must prove that such an order had previously been 1 served onto a respondent and the respondent has failed to obey the same.
- This court cannot base its decision on mere conjectures, inferences or extrapolations so as to find one in contempt of its orders. Solid proof is 10 required for equity and the law of natural justice requires that a proceeding for civil contempt which is regarded as a form of execution and the enforcement of an order alleged to have been violated to the detriment of a private party, the right of a private party to move the court for civil contempt is remedial as such proceedings are governed by the limits of the 15 civil jurisdiction of court.

As a consequence of the noncompliance with the provisions of Order 49 rule of the Civil Procedure Rules, I would find the applicant, being a private party while seeking this Honourable Court to hold the respondents in contempt of its orders, has not proved that such orders have been extracted and served onto the respondents.

That being the case this ground would fail.

c) Whether the respondents failed to comply?

As already found out above, since the applicant has not provided any proof that the impugned orders of this Hon. Court in HCCS No. 010 of 2016 have 25 been extracted and served upon the respondents so that the respondents would be found in contempt of such orders, accordingly, the respondents cannot be held jointly and severally in contempt of the court orders issued in HCCS No. 010 of 2016 where there is no tangible proof of service of such orders upon them.

Accordingly, the respondents cannot be said to 30 have failed to obey court orders they are not legally aware of in accordance with the rules of procedure of this Honourable Court. This ground would also fail.

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Issue 2: 5

b) What Remedies are available to the parties?

From the above conclusions, while it true that this application succeeds in part, it also evident those crucial aspects especially those relating to the extraction and service upon the respondents of the impugned order and the decree of this court in HCCS No. 010 of 2016, are lacking.

- 10 There is no proof that the order and decree of this court in HCCS No. 010 of 2016 were extracted and served onto the respondents, who if were to be found to have refused to obey the same would be found in contempt of this court's orders.
- Since there is no proof that the respondents were served with court's 15 orders which they have failed to obey, then I would conclude that here is no court order for which this court would cite the respondents as being in contempt of.

5. Orders:

Arising from conclusions and reasons above, this application in the whole 20 would fail as it is dismissed with costs to the respondents. I so order.

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Hon. Justice Dr Henry Peter Adonyo Judge 14th April, 2022

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