

Rubadiri Shalita & Others v Mutungi & Another (Miscellaneous Application 17 of 2023) [2023] UGHC 263 (19 December 2023)
[2023] UGHC 263

1 / 11

BEFORE: HON LADY JUSTICE JOYCE KAVUMA**RULING****Background.**

[1] This was an application brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 50 rule 1 and 2 of the Civil Procedure Rules. The Applicants were seeking for orders that:

- *1.* The Respondents be found in continued contempt of Court orders granted vide Chief Magistrates Court No. 76 of 1990, Chief Magistrates Court no. 35 of 1996, High Court Civil Appeal No. 02 of 1996 and High Court Miscellaneous Application no. 172 of 2022.
- *2.* The orders sought by the Respondent in HCMA no. 324 of 2022 & HCMA no. 356 of 2022 be disallowed and the said applications be dismissed.
- *3.* The Respondents vacate the suit land and pay the fines and costs as ordered by this Honorable in Miscellaneous Application No. 172 of 2022.
- *4.* A declaration that the Respondent acted in and or are in further contempt of court orders in paragraph 1 above, in processing and obtaining land titles over the suit land.

The grounds upon which the application was based were briefly laid out in the motion as follows;

- 1. The Respondents' predecessor instituted Civil Suit No. MMB 37 of 1987 in the Chief Magistrates Court in Mbarara which was determined in his favour.
- 2. The late Bishop Shalita filed an appeal vide Civil Appeal No. 76 of 1990 against the above decision. The court in its ruling held that the family of the late Kajundira including the Respondents were trespassers on the suit land and were ordered to vacate.

- 3. The family of the late Kajundira, including the Respondents, were evicted from the suit land by the Court based on the above court orders and their efforts to appeal against the decision of the Chief Magistrate vide High Court Misc. Appeal no. 02 of 1996 were unsuccessful.
- 4. On 24th March 2022, the Respondents forcefully re-occupied the suit land and immediately filed High Court Miscellaneous Application No. 004 of 2022 against the Applicants seeking for revision of orders in Civil Appeal No. 76 of 1990 and High Court Miscellaneous Appeal no. 02 of 1996. This application was dismissed with costs against the 1st Respondent.

- 5. However, the Respondents have continued to defy court orders and continue to forcefully occupy the suit land. The Applicants filed Misc. Application no. 172 of 2022 against the Respondents for contempt of court orders in Civil Appeal No. 76 of 1990 and High Court Misc. Appeal no. 2 of 1996.
- 6. This honorable court delivered its ruling in the said application on the 30th of September 2022 and found that the Respondents were in contempt of the earlier court orders. They were ordered to immediately vacate the suit land, failure of which they could be committed to civil prison and they were each ordered to pay UGX 10,000,000/= as a court fine.
- 7. In further violation of the court orders the Respondents went ahead to process land titles over the same land. This was done illegally and with the full knowledge of this honorable court's

orders and those of the Chief Magistrates Court which had previously decreed them as trespassers on the suit land.

- 8. That the contempt of court orders by the Respondents impedes the course of justice and undermines the authority of this honorable court.

The application was supported by an affidavit sworn by Janet Rubandiri Shalita the 1st Applicant and opposed by an affidavit sworn by Godfrey Muhoozi Kajundira the 2nd Respondent. I have taken cognizance of the contents of the said affidavits in making this ruling.

Representation.

- [2] The Applicants were represented by counsel from M/s Kampala Associated Advocates while the Respondents were represented by counsel from M/s Ntambirweki Kandeebe and Company Advocates. Both counsel in the matter filed written submissions in the matter which I have considered.
- [3] Having examined the affidavits of both parties and submissions of their counsel, I found it pertinent to raise an extra issue in addition to that raised by counsel for the Applicants. The following issues are therefore up for determination by this court;
 - 1. Whether the Respondents are guilty of continued contempt of court.
 - 2. Whether, if the Respondents were guilty of continued contempt had a right to be heard in other subsequent applications by this court.

3. What remedies are available.

Issue 1: Whether the Respondents are guilty of continued contempt of court.

- [4] For an application of contempt of court to succeed, the Applicant(s) have to show court that;
 - 1. There exists a lawful order.

- 2. The potential contemnor has knowledge of the said order.
- 3. The potential contemnor has wilfully failed to comply with the said orders.

(See *Re Ivan Samuel Ssebadduka*, Contempt proceedings arising from Presidential Election Petition No. 1 of 2022 (Supreme Court), *Sitenda Sebalu vs The Secretary General of the East African Community*, Ref. No. 8 of 2012).

[5] The gravamen of the instant application was that the Respondents despite the existence of court orders in Chief Magistrate's Court Civil Appeal No. 76 of 1990 and High Court Misc. Appeal No. 2 of 1992 and this court having found them in contempt of court vide Miscellaneous Application no. 172 of 2022, they have continued to commit acts of contempt in total disregard of courts' findings.

The acts complained of by the Applicants were that the Respondents with full knowledge of the courts' orders continue to defy court orders and forcefully occupy the suit land and have gone ahead and processed land titles over the same land from which they had been ordered to vacate.

The submissions.

On the first element to be satisfied in this application, Counsel for the Applicants was of the stern view that there existed a lawful order vide Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 against the Respondents' predecessor.

It was the contention on the part of the 2nd Respondent on whose behalf Counsel submits that the orders in HCMA No. 2 of 1996 and subsequent orders therefrom and from which this application arises were null and void. Counsel for the Respondents submitted further that owing from the fact that the Appellant in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 (Bishop Shalita) died on 31st October 1995 then any further action without his administrator(s) was unlawful, this including the ensuing execution.

On the second element, counsel for the Applicants submitted that the Respondents were unquestionably aware of the court orders and what was required of them as per the said orders. That the Respondents' knowledge can be gathered from the various applications that have since been filed in this matter one of which was where they tried to have the order in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 set aside but was dismissed. Counsel relied on the decision of this court in *Nambi vs Lwanga* (MA no. 213 of 2017) for that submission.

On this element, counsel for the Respondents submitted that they did not know which Court Order the Applicants were talking about. Whether it was in relation to the execution warrant of 7th February 1997 or this court's orders in MA 172 of 2022. That in relation to the latter orders, they were made on 30th September 2022, at a time when the said land titles had been issued on 20th September 2022. That because of this the land titles could not be in contempt. That on the other hand, those arising from the execution warrant were made at the time when one of the

parties was deceased and not in the name of his lawful administrator(s).

On the third element, it was submitted by counsel for the Applicants that the Respondents processed four land titles on the land which was the subject of Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 in total disregard of court orders therein.

Counsel for the Respondents on this element maintained that there was no violation on the part of the Respondents owing to the illegality of the orders.

Analysis and decision of court.

[6] Before going into the merits of the instant application, for clarity a chronology of the findings of the courts is reproduced below;

In Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 (Bishop K. Shalita vs Christopher Kajundira) at page 9 of the Judgment, the following was the finding of the learned trial Magistrate;

> "...there is some evidence of the matter having gone up to the High Court which ordered a retrial. It took time before this could be done and eventually a fresh suit was filed by the Respondent. Some developments could have been

Page 7 of 18

made during this period as well. From the evidence on record, it would be impossible to distinguish between developments made in violation of an injunction and those made when there was no injunction. In the circumstances I feel it is fair to order that when vacating the land, the Respondent be allowed to remove his developments or dispose of them in any way he deems appropriate." [Emphasis mine]

In Mbarara Chief Magistrate's Civil Misc. Application no. 35 of 1994 the Respondent in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 above (Christopher Kajundira) sought for leave to appeal the above orders. The learned Chief Magistrate found at page 7 of her ruling as follows;

> "The order made by the Chief Magistrate was clear "the applicant had either to remove his developments or dispose them of in any way he liked." While the Applicant could have a remedy against the people who destroyed his property it could not avail him a right of appeal to the High Court. I accordingly find that there is no merit in this application. The applicant failed to establish that there was a substantial question of law to be considered by the High Court or that there was a miscarriage of justice." [Emphasis mine]

In High Court Civil Misc. Application no. 2 of 1996 the Respondent in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 above (Christopher

Kajundira) again attempted to obtain leave of the High Court to appeal the decision in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990. My learned brother Judge in that application held at pages 4 and 6 as follows;

> "...With all due respect to learned counsel, Mr. Kahungu Tibayeita, I do not consider the primary role of courts of law to be that of a charitable institution. The fact that the respondent had a lot of other land in the vicinity of the disputed land could not constitute a good ground for allowing the applicant to remain on the disputed land even when the evidence on record, according to the learned Chief Magistrate more than revealed that the applicant's position was that of a trespasser...In the circumstances, therefore, the applicant has failed to satisfy this court that there is a substantial point of law or that a miscarriage of justice has occurred for him to deserve being granted leave to appeal to the High Court against the judgment and order of the court below. The Application is dismissed." [Emphasis mine]

[7] From the above findings of the different courts that have handled this matter before, there is one clear thread running through all of them, this is the fact that the court order Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 ordered Christopher Kajundira to vacate the suit land which according to the extracted warrant annexed as "D" to the Applicant's

application was "Vast grazing land at Omukyera Kanyoza Kikatsi Nyabushozi".

The court in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 ordered that Christopher Kajundira removes his developments or dispose them of in any way he liked.

It is not in dispute who the predecessors of Bishop K. Shalita or Christopher Kajundira were. According to the facts before me, the predecessors of the former, (Bishop K. Shalita), were the Applicants in the instant application while those of the latter, (Christopher Kajundira), were the Respondents in the instant application.

With the above background in mind, I will proceed to consider this application.

[8] Continued contempt of court as distinguished from one single and isolated act of contempt refers to situations where the acts of disrespect or disobedience towards a court or its orders continues over time. For an application based on continued contempt to succeed, the Applicant (s) must, in addition to proof of the aforementioned elements, prove that;

> 1. The act is sustained, that is, that the act of contempt must be ongoing and not just a one-time occurrence. The Applicant must show that the potential contemnor is actively choosing to disobey the court or disregard its authority.

Page 10 of 18

2. The act involves multiple actions. Here, the Applicant must show court that various actions such as repeated disobedience have occurred.
- [9] It is the law that while dealing with an application for contempt, the court doing so is only concerned with whether the earlier decision which has received its finality had been complied with or not. If there was any ambiguity or indefiniteness in the order, it is for the party concerned to approach the court if according to him or her the court decision is not legally tenable.

The court exercising contempt jurisdiction cannot take upon itself the power to decide the original proceedings in a manner not dealt with by the court passing the judgment and order right or wrong, the order has to be obeyed. The court that issued the contempt order cannot traverse beyond the order, non-compliance of which is alleged i.e., taking note of what should not have been done or what should have been done. The Contempt court cannot test the correctness of the order or give additional directions or delete any direction as it would amount to exercising review jurisdiction which is impermissible and indefensible in such an application. (See *Director of Education, Uttaranchal & Ors vs Ved Prakash Joshi & Ors Appeal (civil) 3713 of 2005 (Supreme Court of India)*).

It therefore follows that a party who knows of an order of court, regardless whether in their view the order is null or void, regular or irregular cannot be permitted to disobey it by reason of what that party regards that to be. The order must be complied with in totality. However, in a case there are

Page 11 of 18

impediments to the compliance the party must bring this to the attention of court and show reasons why they cannot comply. (See *Housing Finance Bank Limited vs Edward Musisi (Court of Appeal Misc. Application No. 158 of 2010)*).

- [10] From the above submissions of both counsel, it is clear that there is no discord as to the existence of court orders in Chief Magistrate's Civil Appeal No. 76 of 1990. These are the orders in question.

It is also clear from the affidavits filed and submissions of both counsel for the parties that the two Respondents had knowledge of the aforementioned court orders but their counsel fronted the argument that owing to the fact that they believed them to be null and void, then they did not have to comply with them. Counsel further submitted as I have summarised above that they did not know which orders they had violated.

- [11] I have for clarity summarised for the Respondents the orders that they had to comply with. These were the orders in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 that they had full knowledge of, which required their predecessor Christopher Kajundira to vacate the land at Omukyera Kanyoza Kikatsi Nyabushozi.

As I have already pointed out in the foregoing authorities, a party with knowledge of existing court orders is required to comply with them even if in their view they think the said orders are null or void. Failure to do so will attract sanctions from the courts of law to enforce compliance. It is not the

Page 12 of 18

duty of this court to which the application for contempt has been brought to review the orders in order for it to make its own determination on whether or not the order was lawful or not. The duty of this court in relation to such an application is only one, that is, to ensure compliance. A party seeking clarity, review or appeal of orders has a number of remedies provided for under the law at his disposal.

- [12] In the instant application, the 1st Applicant deposed under paragraph 17 that the Respondents had processed land titles over the same land from which they had been ordered to vacate. Copies of the said land titles were annexed to the affidavit as annexures H & I. The 2nd Respondent under paragraphs 18, 19 and 20, deposes that the instant suit was a disguised suit seeking court to cancel their certificates of title issued under the Registration of Title Act, yet the law gives the procedure of how such certificates can be cancelled. That the Applicants already petitioned the Commissioner for Land Registration to cancel the titles and the instant application was therefore an abuse of the process of court.
- [13] I have examined annexures H & I which the Respondents do not dispute. Of specific interest to this court are those titles registered in the names of the Respondents herein. These were FRV MBR 1285 FOLIO 11 known as Plot 43, Block 90 at Ekimomo and FRV MBR 1285 FOLIO 10 known as Plot 42, Block 90 at Ekimomo. The former title was made under instrument number MBR – 00054142 on 20th September 2022 and registered in the names of Kyamukuku Margret, Mutungi Charles (the first Respondent herein) and Atushumbusire Phionah. The latter title was made under instrument number MBR – 00054141 on 20th September 2022 and registered in the names of Muhoozi Kajundiira Godfrey (the second Respondent) and Ninsiima Alex.
- [14] From the above evidence, it is clear that the Respondents in addition to the actions that were complained of in High Court Miscellaneous Application no. 172 of 2022 in which this court found them in contempt of court, have further engaged in sustained and repeated acts of disobedience of the court orders in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990 by creating land titles vide FRV MBR 1285 FOLIO 11 and FRV MBR 1285 FOLIO 10 on the land that their predecessor Christopher Kajundira was ordered to vacate. In the upshot therefore, I find the Respondents in continued contempt of the orders of the court in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990.

Issue 2: Whether, if the Respondents were guilty of continued contempt had a right to be heard in other subsequent applications by this court.

- [15] Both counsel agree in substance of their submissions that a party in continued contempt of court orders cannot be heard in further applications by court until when he or she has purged themselves of the contempt prior to making such applications.
- [16] The above has been the position held by superior courts on the treatment that the courts of law should give to parties that have been found in contempt of court orders. (See Housing Finance Bank Ltd and Another vs Edward Musisi Court of Appeal Misc. Application no. 158 of 2010 and Jingo

Livingstone Mukasa vs Hope Rwaguma Court of Appeal Civil Appeal no. 190 of 2015).

In the former case of Housing Finance Bank Ltd and Another vs Edward Musisi, (supra) the court held as follows;

> "A party in contempt of court by disobeying existing court orders cannot be heard in a different, but related cause or motion unless and until such a person has purged himself or herself of the contempt."

In the latter decision of Jingo Livingstone Mukasa vs Hope Rwaguma, the court held that;

> "The contemptuous acts in issue in the instant case are an undisputable affront to the rule of law and due process that the court cannot ignore. They typify and bring into purview the equitable maxim that 'he who comes to equity must come with clean hands'. The obviation of the Appellant's right to appeal would ordinarily be the Court's sanction of last resort, primary recourse being made to such other coercive sanctions as would engender compliance with the flouted orders. However, there are scarcely any other feasible options at the Court's disposal, the Appellant having sub-divided and transferred part of the suit property to a third party that has since registered as the proprietor

Page 15 of 18

thereof. Consequently, the subject matter of this Appeal having been removed from the Court's purview at the instance of the Appellant and blatant violation of the trial court's orders...It would be antithetical to the rule of law and an endorsement of the flagrant abuse of court process were this court to entertain an appeal by the Appellant that has been adjudged for disobedience of lawful court orders that are the subject of appeal."

- [17] In the instant matter, I found no reason to depart from the binding decisions of the Court of Appeal in the above decisions.

It therefore follows that the Respondents cannot be heard by this court in any other applications filed after this court's decision in High Court Miscellaneous Application no. 172 of 2022 on 30th September 2022 wherein they were found to be in contempt of court orders in Mbarara Chief Magistrate's Civil Appeal No. 76 of 1990. The impugned applications are;

- 1. HCT-05-CV-MA-395-2022 (Charles Mutungi and another vs Janet Rubadiri Shalita) filed on 7th November 2022.
- 2. HCT-05-CV-MA-418-2022 (Charles Mutungi vs Norman Shalita and 3 others) filed on 23rd November 2022.
- 3. HCT-05-CV-MA-419-2022 (Charles Mutungi vs Norman Shalita and 3 others) filed on 23rd November 2022.
- 4. HCT-05-CV-MA-354-2022 (Charles Mutungi and another vs Norman Shalita and 6 others) filed on 26th October 2022.

Issue 3: What remedies are available?

In the case: Sarah Nabawanuka & 7 Others v Makerere University & 2 Others HCMA No.420 of 2019 Ssekaana J held;

"a court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option."

Having found the Respondents to be found in continued contempt of Court orders granted vide Chief Magistrates Court No. 76 of 1990, Chief Magistrates Court no. 35 of 1996, High Court Civil Appeal No. 02 of 1996 and High Court Miscellaneous Application no. 172 of 2022 the orders sought in this application are granted in the following terms;

1. A declaration does issue that the Respondents acted in and or are in further contempt of court orders in processing and obtaining land titles over the suit land.
2. The Respondents are further ordered to comply with orders by this Court issued in Miscellaneous Application No. 172 of 2022 on 29th September 2022.
3. Should the Respondents fail to comply with this court's orders above the Applicants shall be entitled to file an application for Notice

to Show cause why the Respondents should not be committed to civil prison.

4. As a general rule regarding costs in civil matters is that they follow the event. (See Section 27 of the Civil Procedure Act). The Applicants being the successful parties in this application are awarded the costs of the application.

Dated this 19th day of December 2023

Joyce Kavuma

Judge

Page 18 of 18

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/2023/263/eng@2023-12-19
CASE PAGE	https://chat.esheria.ai/case-law/uganda/rubadiri-shalita-v-mutungji-miscellaneous-application-17-of-2023-2023-ughc-263-19-december-2023-and-others-unknown-topic-unknown-court-2023

Prepared on 13 October 2026 · Esheria