

UGANDA / JUDGMENT

Rudasingwa v Commissioner Land Registration (Miscellaneous Application 2237 of 2024) [2025] UGHCLD 129 (9 July 2025) [2025] UGHCLD 129

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Miscellaneous Application 2237 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA LAND
DIVISION**

**MISCELLANEOUS APPLICATION NO.2237 OF 2024 ARISING FROM MISCELLANEOUS
CAUSE NO. 137 OF 2018 RUDASINGWA PETER:.....**

VERSUS

COMMISSIONER LAND REGISTRATION:.....

BEFORE LADY JUSTICE CHRISTINE KAAHWA

RULING.

This Application was brought under Section 34 and 98 of the Civil Procedure Act, Cap 282 and Order 52 rule 1 of the Civil Procedure rules for Orders that:

- a. The Respondent be cited for contempt of Court in Miscellaneous Application No. 137/2023.
- b. The respondent be detained in civil prison for contempt of Court.
- c. The special title deeds for land at Busiro comprised in plot 102 Block 328 at Nakitokolo issued to the Administrators of the estate of the late Cissy Nansubuga be cancelled.
- d. That an order enforcing the vesting order in Misc. Application 137/2023 be granted.
- e. The respondent pays a fine of 100,000,000 as compensation to the Applicant.
- f). Costs for this application be provided for.

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The grounds in support of the Application are contained in the Affidavit of the Applicant, **Rudasingwa** but briefly are that; the Applicant filed Miscellaneous Cause No.137 of 2018 seeking a vesting order for land comprised in Block 328 Plot 102 against the Respondent in this Court. That the Applicant had bought the said land from the late Cissy Nansubuga who unfortunately passed away before she could transfer the land into the names of the Applicant. That on the 14th day of April 2018, Justice Bernard Namanya issued a judgement granting the application for vesting order of the said land into his names.

Additionally, the Respondent wrote to this Court seeking verification of the said order, which was done by the Deputy Registrar confirming that the said order is authentic and originates from this Court. Upon making a search in the land registry, the Applicant found out that the Respondent had issued a title to the administrators four months after the Court order of this Court was issued. That the Applicant wrote to the Respondent seeking an amicable settlement of the matter but no response has been received. That the actions of the Respondent were illegal and have caused the Applicant a lot of hardship, financial loss and psychological torture and that it is in the interest of justice that the special title issues to the administrators of the late Cissy Nansubuga be cancelled and another issued to the Applicant. No affidavit in reply was filed by the Respondent.

Representation and hearing.

The Applicant was represented by C/o Katongole & Co. Advocates while the Respondent did not enter appearance and therefore unrepresented.

Directions were given for the parties to file written submissions. None of the parties complied with the schedules of Court as no further action was taken on file since extraction and service of the said Court directions.

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Issue.

Whether the Respondent committed contempt of Court?

Resolution of the issue.

Whether the Respondent committed contempt of Court?

In *Betty Kizito vs Dickson Nsubuga & 6 others* (Civil Application Nos.25 & 26 of 2021 arising from Civil Appeal No.8 of 2018), the Supreme Court addressed the nature of contempt proceedings as well as the distinction between criminal and civil contempt.

The Justices held that contempt proceedings are between the alleged contemnor and the court. The party who takes out a motion for contempt is merely relying information to the court about an alleged contempt but the actual proceedings are really between the court whose orders have been defied and the contemnor.

Further, the Justices ruled that the key distinction between criminal contempt and civil contempt is that the former happens in the presence of court when a contemnor interferes with the court's ability to function properly. Criminal contempt, the court ruled, may take the form, inter alia, of yelling at a judge presiding over a case, insolvent language and assaulting persons in the courts.

On the other hand, civil contempt occurs outside the court's realm and usually takes the form of disregarding court orders and judgments. Civil contempt must be brought to the court's notice by the parties. The Justices ruled that the applicant or litigant who brings alleged contemptuous conduct to the attention of court does not become party to the proceedings as he/she merely assists court by furnishing information about the alleged contempt. The court approved of the ratio

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descidendi of Mubiru J in Florence Dawaru vs Angumale Albino & Another, Misc. Application 96 of 2016.

Black's Law Dictionary, 10th Edition page 385, defines civil contempt as the failure to obey a court order that was issued for another party's benefit. A civil contempt proceeding is coercive or remedial in nature. The usual sanction is to confine the contemnor until he complies with the court order.

In Sempebwa and Others vs. Attorney General [2019]1 E. A 546 the Supreme Court set down the ingredients of civil contempt, which an applicant must prove in order succeed namely;

- service or notice of the court order; \$i\$.
- ii. non-compliance; and
- willfulness and mala fide beyond reasonable doubt. iii.

Therefore, once the Applicant has proved the first three requisites of civil contempt, the respondents will bear the evidential burden in relation to willfulness and mala fides. If the respondent fails to advance evidence that establishes a reasonable doubt as whether non-compliance was willful and mala fide, then contempt would have not been established beyond reasonable doubt. A declaratory and other appropriate remedies may then be available to the civil applicant, on proof, but on a balance of probabilities.

It should be noted that even where an applicant satisfies all the requirements of civil contempt, a court may still decline to make a finding of contempt, where the alleged contemnor shows that he/she acted in good faith and was taking reasonable steps towards compliance with the order.

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From the affidavit of service on record, the Respondent was served on the 21st May 2025. Paragraphs 6, 7 and 8 of the said affidavit of service states:

"6. That on the 21st day of May 2025, at around 8:30 am, I proceeded to the office of Commissioner Land Registration to serve them the copies of Notice of Motion *together with Court directions.*

7. That on reaching there, I was welcomed by a gentleman whose names were not disclosed to me, I introduced myself and the purpose of my visit hence serving him the copies of Notice of Motion together with Court Directions.

8. That he received and stamped on the return copies hereto attached."

In the Court of Appeal case of Ali Muteza v Jessica Nakku Aganya, Civil Appeal No. 271 of 2019, the Hon. Justice Geoffrey Kiryabwire had this to say;

"I am inclined to agree with the finding of Justice Remmy Kasule that more than just the proper exercise of discretion, it is evident that the affidavit of service was far too general to meet the requirements of personal service. I would like to add that the quality of affidavits of service used in the Courts is increasingly falling below required legal standards. Courts should take particular care in accepting affidavits of service especially where it is averred that service has taken place but party so alleged to have been served does not show up. An erroneous reliance on a defective affidavit leads to a miscarriage of justice and an unnecessary lengthening of judicial proceedings to correct the error instead of resolving the underlying *dispute in Court.*" (Emphasis mine)

In this case, the Respondent is an Office that is charged with Registration of Land. The Respondent wrote to the Deputy Registrar of the Land Division to verify the impugned court which done on the 31st May 2023. It is therefore crystal clear that

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the Respondent was aware of the court Order and had indeed received it. I find that none compliance of the Orders of the court is done mala fide.

It is pertinent to note that the Respondent did not appear in court despite service being effected on him. The directions of the court for writing submissions were not complied with.

In the case of Serefaco Consultants Limited v Euro Consults and Arcadis Euro Consult CACA No.16 of 2007 while referring to the case of H. G. Gandesha and Kampala Estates Ltd and G. J. Lutaya, SC Civil Application No. 14 of 1989 Kavuma JA stated that: 'It is settled law that if the Applicant supports his application by affidavit or other evidence and the Respondent does not reply by affidavit or otherwise, and the supporting evidence is credible in itself, the facts *stand as unchallenged'.

Lastly, I find that the evidence presented by the Applicant unopposed. In the result, the Applicant having proved all the conditions for grant of the application I allow the application with the following orders;

1. The Respondent is directed to pay Shs.5,000,000/= (five million Shillings only) to purge themselves of contempt within 14 days of this order.
2. That the Respondent pays the taxed costs of this application.

Dated at Kampala this 9th day of July 2025.

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Christine Kaahwa

JUDGE

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Prepared on 13 October 2026 · Esheria