

Ssenyondo v Galiwango & 5 Others
(Miscellaneous Application 971 of 2024)
[2025] UGHCCD 48 (26 February 2025)
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1. *A Declaration that the Respondents are in willful disobedience and breach and/ or contempt of court orders and directions issued by this Honorable Court on the 4th day of September, 2024, vide Miscellaneous cause No. 166 of 2022.*
2. *A warrant of arrest be issued against the Respondents and the same be committed to civil prison for contempt of court orders and directions.*
3. *An executable penalty be imposed against the Respondents and/or contemnors for their willful violation of this Honorable court orders and directions.*
4. *Costs of the Application be provided for.*

The grounds in support of the application are briefly set out in the Notice of Motion and the affidavit in support sworn by **SSENYONDO HASSAN** contending that;

1. That a one Kikabi Ismail and others vide miscellaneous cause No. 166 of 2022 sued the management committee of Juma & Zukuuli group in Uganda to wit Sheikh Muhammad Lunanoba and Al-Hajj J. A Sebuta Malende.
2. That pursuant to the proceedings in miscellaneous cause No. 166 of 2022, this honorable Court on the 4th Of September, 2024, issued an order and directions dated the 5th of September, 2024, issued an order and directions dated the 5th of September , 2024 directing the mediators , who are also judicial Officers, to amongst other things, to conduct the general assembly to pass the new constitution of Juma & Zukuuli Trust and thereafter conduct the election of Office bearers under the new Constitution.
3. That it was an order and direction of this Honorable Court that the new Office bearers shall be installed and/ or take Office of Juma & Zukuuli with immediate effect.
4. That on the 7th day of September, 2024, the appointed mediators / judicial Officers carried out the tasks implored to them, by this Honorable court.
5. That the Applicant together with others were elected as the new Offices bearers and as ordered and directed by Court, they assumed Office with immediate effect.
6. That all the Respondents are very much aware of the existence of the Court orders and directions of and they know very well the new Office bearers.
7. That in disobedience of the Court order and directions, the Respondents on the 24th September 2024 came and dismantled and removed all the padlocks on the Offices of the Juma & Zukuuli, which actions are in contempt of this Honorable Court orders and directions issued on the 4th of September, 2024.
8. That the Orders of Court and directions issued by this Court, were very clear and an unambiguous which was understood by everyone including the Respondents.
9. The above said Court orders and directions therein have not been vacated, reversed or otherwise varied by a Higher court of law.

10. That the Respondents continued contemptuous actions of preventing the new Office bearers from accessing the Office to which they were elected in, have greatly affected the Applicant who is the General Secretary and other elected office bearers to perform their duties as expected.
11. The contemptuous acts of the Respondents have been repetitive with impunity and the same is still continuing to date.
12. That the Respondents were recorded while congratulating themselves for having defied the Court order and by breaking the padlocks on the Office of Juma Zukuuli Muslim Group in Uganda located at the at the premises of Kawempe Muslim Secondary School.
13. That I affirm this Affidavit in support of my Application for a warrant of Arrest to issue against all the Respondents for their actions of willful disobedience, breach and/or contempt of Court order and directions therein to which they had knowledge of.
14. That it is in the interest of justice that this Applicant be allowed and the reliefs sought be granted so that punishment is given to the potential contemnors who are the Respondents.

The 1st Respondent filed his affidavit in reply to the Application, briefly stating that;

1. That this application is incompetent and an abuse of court process.
2. That I knew about the cause and order in Miscellaneous Cause No. 166 of 2022 because my family was part of the 37 families pointed out to attend the Annual General meeting for the Juma and Zukuli Group.
3. That I attended the Annual General Meeting which was held on 7th September, 2024. The presiding officer was His Worship Mulalira Faisal Umar.
4. That I raised the objection that the Annual General Meeting was being held in contradiction to the court order, but the presiding officer, His Worship Mulalira Faisal Umar, gave a deaf ear and continued with the session.
5. That I also informed the General Assembly that non-verified persons were being allowed to participate but this was also ignored.
6. That I did not dismantle, remove and / or replace any padlock as alleged or at all and I challenge the Applicant to adduce any evidence to that effect.
7. That I did not assault a one Katongole Alman Hussein or any other person as alleged or at all and I challenge the Applicant to adduce evidence to that effect.
8. The allegations made against me are general and do not specify with any particularity what I did and I am unable to properly respond to the same with particularity.

9. That he never made recordings celebrating or congratulating any one for defying a court order and that he never broke any padlocks at the office of Juma and Zukuuli. He requests that the applicant provide strict proof of these allegations.
10. That he was not present at the location where the audio was recorded. He also expresses uncertainty as to why his name was mentioned in the audio.
11. That the applicant and his counterparts occasionally made threats towards him, suggesting the court would imprison him. He does not understand the reasons related to these threats.
12. That he went to the Kawempe Police Station and the Resident City Commissioner to report the wrongful and unlawful conduct of certain individuals, led by Aiman Katongole Hussein, Hassan Ssenyondo, Isma Nsambu, and Abdul Aziz Lukwago, accompanied by armed private security guards, allegedly evicted people from the premises, changed padlocks, and deployed private security.

The 2nd Respondent filed his affidavit in reply to the Application, briefly stating that;

1. That I have never made any recordings celebrating/ congratulating any one for having defied any court order and I have never broken any padlocks of the office of Juma and Zukuuli located at Kawempe Muslim Secondary School.
2. That the applicant and his counterparts, occasionally made threats towards me, that court shall first put me in a prison cell. These threats have been made to me, for reasons and matters I do not understand.

The 3rd respondent filed his affidavit in reply to the Application, briefly stating that;

1. He denies making recordings that celebrated defiance of court orders or breaking padlocks at Kawempe Muslim Secondary School.
2. He was not present where the audio was recorded and is unsure why his name was mentioned and the applicant and his counterparts allegedly made threats towards him, suggesting the court would imprison him.

The 4th respondent filed his affidavit in reply to the application, briefly stating that;

1. The application is an abuse of court process and should. It is vexatious, misconceived, bad in law, and untenable. be dismissed with costs.
2. That he was never served with any court order related to HCMC No. 166 of 2022 and was unaware of it until this application.
3. The order in HCMC No. 166 of 2022 impacts the Juma and Zukuli Group, who have unsuccessfully sought to be included as parties.
4. They have applied to set aside the order in HCMC No. 166 of 2022 and permanently halt the proceedings.

5. That he is not aware of the assault and has never been summoned to answer any charge.

The 5th Respondent filed his affidavit in reply to the Application, briefly stating that;

1. The application is vexatious, misconceived, bad in law and untenable at law, and an abuse of court process, brought in bad faith, and should be dismissed with costs.
2. The applicant's affidavit contains material falsehoods intended to mislead the court.
3. That did not take part in the General Assembly where the alleged office bearers were elected.
4. That he did not interfere with the office operation by the new office bearers and / or willfully violate the orders and directions and I was not served with the order and was not aware of it.
5. That he was not aware about the assault on Katongole Alman Hussein and has never assaulted him as alleged.

The 6th respondent filed his affidavit in reply to the application, briefly stating that;

1. The application is vexatious, misconceived, bad in law, and abuse of court process. The application lacks merit and is intended to harass the respondents.
2. The Applicant's affidavit contains material falsehoods intended to mislead the court. The Applicant is the one who selected who entered the General Assembly and those who did not.
3. Those who attended the General Assembly and took part in the voting process of the new office bearers are not members of the Registered Trustees of Juma and Zukuli Muslim in Uganda as per the pre- requisites in the constitution.
4. That did not interfere with the office operation by the new office bearers and/or willfully violate the orders and directions in the said order.
5. The Applicant arrived with a private security company named "SECURICO" and ordered them to take me out of office.
6. The Respondents were in office and it was impossible to dismantle their own property. That he personally did not remove or dismantle the Applicant's padlocks.
7. That he did not interfere with the assault on Katongole Alman Hussein and I have never assaulted him as alleged.

ISSUES

1. ***Whether the respondents acted in contempt of court?***
2. ***What remedies are available?***

Legal Representation.

The applicant was represented by *Counsel Muhamed Matovu.* While the respondents were represented by *Counsel Kijjambu Akram, Derrick Bazekuketta and Kibazo Nasser.*

Preliminary Considerations

When this application came up for hearing on 3rd October 2024, the court ordered and directed that the respondents as contemnors should appear in court and explain their conduct in court. They were supposed to appear on 7th October 2024 at 2:00pm.

On the day the matter was adjourned 7th October 2024, the respondents refused to appear in court to explain their actions and conduct at Kawempe Muslim Secondary School. This court took it that their refusal was equally contemptuous and this an aggravating factor in their disobedience of court.

The court issued a warrant of arrest against all of them and the same still stands with exception of Hajj Twaha Makayu and Twaibu Mugambe who appeared to court on 12th and 17th February 2025 and explained themselves to court and denied being in contempt. The court found the 4th respondent to have been in contempt and gave him a suspended sentence of 6 months and was ordered to pay a sum of 1,000,000/= to Juma and Zukuuli as compensation for the contemptuous conduct within 3 months. The 5th respondent was cleared any wrongdoing to the extent that he claimed he is a teacher at the said schools and was only present at his place of work.

The 3rd respondent was arrested and presented to court and failed to satisfactorily explain his conduct in disobeying the court orders. He merely pleaded for leniency and did not justify his conduct which disregarded the lawful orders of court. The court ordered for the imprisonment of the 3rd respondent for period of 12 months at Luzira prison.

The two applicants equally confirmed that the rest of the respondents participated and were present at the school-Kawempe Muslim Secondary School when they were coordinating the breaking of the padlocks and forceful entry into the offices of Juma and Zukuuli Group in Uganda.

There were other persons who were equally dragged to court for being contemptuous to wit; Mr. Njuki Noor Mbabali (Deputy RCC), Mr Muwonge Abbey (DPC Kawempe Police Station), Mrs Juliet Ulama (Head Security Kawempe Muslim Sc. School), Mr Ssebugenyi Mahad and Mr. Kaggwa Hussein.

The court issued a Notice to Show Cause why they should not be committed to prison for violating a court order. They all appeared to court and explained their conduct and it was only the Deputy RCC who refused to appear in court and the applicants brought an independent application-Miscellaneous Application 1126 of 2024. The court cleared all the names persons and none of them was committed to prison. The court is now determining the fate of those who refused to appear in court when directed.

The law of contempt is in reality in place to protect the public from any act calculated to obstruct or interfere with the due course of justice, or the lawful process of the courts with clear court orders.

Determination/Analysis

“**Contempt of Court**” is defined as, any act which is calculated to embarrass, hinder, or obstruct the court in administration of justice, or which is calculated to lessen its authority or its dignity.

See Black’s Law Dictionary, 6th Edition (1990) page 319.

Civil Contempt is referred to as the “willful disobedience to any judgement, decree, direction, order, writ or other processes of a court or willful breach of an undertaking given to a court”

The purpose of the law of Contempt is to protect the tool of justice and the interests of the public. It prevents interference in the course of justice and to maintain the authority of the law.

Civil Contempt is also called “**Sui generis**” because it happens outside the courtroom, and the judge needs evidence to decide if someone is in contempt. For Court to find someone in civil contempt, it must prove three things*; **1. The Non- Complaint party was aware of the Court Order, 2. The Non- Complaint Party knowingly and willfully violated the Court Order, despite having the ability to comply with the Order. 3. The Non- Complaint party did not have any reasonable explanation as to why they disobeyed the order prove contempt.***

The court said that someone can be jailed for civil contempt if they refuse to do something that a court order required them to do. The order must have been clear and mandatory. ***See Re Contempt of Dougherty 429, Michigan 81, 97 (1987).***

Court orders are supposed to be obeyed without fear or favor in order to uphold the rule of law. The law for contempt with power of imposing punishment ensures respect for the courts in the eyes of the public by guaranteeing sanction against conduct which might assault the honor of courts. The actions of the contemnor are an eye front to the Judiciary which is unintended to despise the court in execution of their duties. The power to punish for Contempt is not meant at giving protection to the individual judicial officer. On contrary, it intends to inspire confidence in the society and efficacy of the Judiciary.

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The Contemnors as noted in the preliminary consideration were summoned to appear in the court to explain his role in breaching the court order in respect of the property of Juma and Zukuuli.

The Contemnors-1st 2nd 3rd 4th and 5th 6th respondents refused to appear in court and this Court issued a warrant of arrest to cause them to explain why they refused to appear in court and show cause, why they should not be imprisoned. An alleged contemnor is required to personally attend contempt proceedings. This is so because court processes are required to be served personally on the alleged contemnor.

The Court simply required the Contemnors to explain to this Court why they have disobeyed the Court Orders and specifically disrupting the school activities by trying to resist a peaceful takeover of Juma and Zukuli offices at Kawempe.

The Contemnor has not shown any cause why he should not be committed to prison apart from pleading for mercy. This Court shall not stand by, when people like Lukman Galiwango Malende, Khalifan Lutaaya, Kibirige Umar and Kinene Hassan take the law in their own hands by disrespecting lawful orders that have been issued by court by breaking into the offices of Juma and Zukuuli.

The Courts in practice have punished Contempt of Court with either Imprisonment or a fine or both. ***See Re Contempt of Dougherty 429, Michigan 81, 97 (Supra)***

The contemnor has avoided court until he was arrested on the 11th /02 / 2025 in the afternoon while the rest have decided to evade court and keep on the run.

The Court cannot constrain to be in a ***“mute mode”*** when its orders are being disobeyed with impunity. The respondents are aware of the existence of the court since it was the basis of calling the general assembly to pass the constitution and also elect new office bearers

The court shall not be mocked while the judicial officers look on. The contemnors who are on the run. These include 1st respondent ***Lukman Galiwango Malende***, 2nd respondent ***Khalifan Lutaaya*** and 6th respondent ***Kinene Lutaaya***.

In this circumstance, the court having clearly analyzed both the facts and evidence for both sides, it's very clear that the respondents' actions constitute to a willful disobedience and contempt of court orders issued by this Honorable Court on 4th September, 2024 in Miscellaneous Cause No. 166 of 2022 and also an order to appear in court on 7th October 2024. The court Orders were very clear and, unambiguous, but the respondents deliberately obstructed the implementation of these orders by dismantling padlocks, preventing access to the office, and disrupting the administration of the Trust property.

The respondents' actions have not only disrupted the operation of the Juma and Zukuuli Trust as well as school activities but also brought the court's authority in disrespect and disrepute.

Any 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, is contempt of court. The rationale is about preserving and safeguarding the rule of law. 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.

This is because the public has an interest and a vital stake in the effective and orderly administration of justice. The Court has the duty of protecting the interest of the public in the due administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for the protection of the public interest in the proper administration of justice, as Lord Atkin observed in **Andre Paul 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**;

Every judicial officer presiding over court proceedings has the power to punish for contempt. The right and power of court to punish or pronounce sanction on whoever disobeys its order are inherent and legitimate right of every court. Disobedience of a court's order is a serious contempt and courts of law must protect themselves from being maligned or ridiculed. **See Afribank (Nig) Plc v Yelwa (2011) 12 NWLR p.286**

However, since, the contempt proceedings are not in the nature of criminal proceedings, it is open to the court to cross-examine the contemnor and even if the contemnor is found to be guilty of contempt, the Court may accept apology and discharge the contemnor. This peculiar feature distinguishes contempt proceedings from criminal proceedings.

In line of the instant case, the 1st 2nd 3rd and 6th respondent who are the contemnors made no appearance in court to be cross examined on their alleged evasive denials. The court was left with option but to decisively deal with them.

In determining the appropriate sanction, the court should consider that the objective of the contempt of court proceedings is to protect the public interest or confidence in the due administration of justice. This is done by punishing acts or disobedience of lawful orders which tend to abuse or make a mockery of administration of justice, or which tend to lower the authority of court.

Therefore, it is in the interest of justice to grant the applicant some of the reliefs sought:

1. **This court issues a *STRONG WARNING* against Sheikh Muhammad Lunanoba and his 'allies' and agents to stop their actions and conduct of causing disobedience of lawful orders of court.**
2. **A warrant of arrest is issued against the 1st ,2nd and 6th respondents-Lukman Galiwango Malende, Khalifan Lutaaya and Kinene Hassan and the same persons are committed to civil prison for 12 months for their contemptuous conduct and actions.**

I so Order

Ssekaana Musa

Judge

This ruling is delivered by the Registrar this.....day of February 2025

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