



- v. The Respondents be jointly ordered to pay Ug. shs: 250,000,000/= as exemplary/punitive damages for contempt of court.
  - vi. The Respondents be jointly ordered to pay a fine of Ug. shs: 100,000,000/= for their contempt.
  - vii. An order be issued cancelling the second Respondent's name from the certificate of title of property comprised in Kyadondo Block 184, Plot 2006, Nsasa Kira replacing it with the Applicants names as the registered proprietors.
  - viii. Costs of this application.
2. Mr. Renato Kania of M/s. Kania & Ali Advocates & Solicitors represented the Applicants. On 22<sup>nd</sup> October 2019 when the application came up for hearing, the Respondents never appeared despite being served prior and proof of service returned. Without any satisfactory explanation for their absence, court allowed the matter to proceed exparte.
  3. The application was supported by the affidavit of the first Applicant. The grounds for the application were that Misc. application 569 of 2018 Ssemambo Rashid v. Lukwago Jimmy was settled by a consent order in which it was directed that the first Respondent transfers all interests in block 184 plot 2006 Nasa Kyadondo to the Applicants. The Applicants took possession and began making improvements on the same. However the first Respondent refused to transfer his interests to the Applicants, mortgaged the property and transferred his interests to the second Respondent who has transferred the same into his name yet he is fully aware of the consent terms. In the night of 11<sup>th</sup> October 2019, the second, third and fourth Respondents accompanied by police personnel and goons raided the property, broke a gaping hole in its wall, occupied it and began conducting massive construction activities on it.
  4. Further that the third and fourth Respondents with full knowledge of the court order have facilitated the first and second Respondents in contempt of the court order by deploying police personnel to evict the Applicants and by providing support by way of goons to aid the first and second Respondents in their commission of the contempt.

5. The issues for determination are; (i) whether the Respondents are in contempt of the court order in issue and (ii) what remedies are available?
  
6. In **Housing Finance Bank Ltd & Anor v. Edward Musisi Misc application No. 158 of 2010**, the Court of Appeal held that “a party who knows of an order, regardless of whether, in the 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. 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, in all circumstances by the party concerned subject to that party’s right to challenge the order in issue. This may be by way of revision, review or by appeal. See CHUK CREMET (1 Corp Jemp 342). We hasten to add that it is the responsibility of and duty of the party concerned, in case that party for some genuine reason, finds compliance with the court order not possible, to appropriately move court issuing the order and bring to the attention of the court the reasons for non compliance.”
  
7. In **HCMC No.21 of 2014 Megha Industries (U) LTD v. Comform Uganda Limited**, it was held that to prove contempt of court, one has to prove; (1) existence of a lawful order; (2) the potential contemnor’s knowledge of the order; and (3) the potential contemnor’s failure to comply i.e. disobedience of the order.

### **Analysis**

8. On 20<sup>th</sup> November 2018, at the consent of the Applicants and the first Respondent who were parties before me in Misc. applications 569 and 232 of 2018 arising from civil suit 18 of 2017, in which the Applicants had sued the first Respondent, the first Respondent in full and final settlement of these suits willingly of his free will consented to hand over his suit property to the Applicants and relinquish all interests therein. He committed to hand over signed transfer forms and certificates of title and give the Applicants immediate quiet possession of the same.
  
9. The grand effect of the consent was that the first Respondent handed any rights he had in the suit property to the Applicants as a settlement of monies he owed to them. Accordingly the first Respondent had no powers to transfer the suit land to the second Respondent after the

consent judgment. He also had no powers to mortgage the suit property. Even the act of destroying the suit property, chasing out the Applicants' assignee and taking its possession was a contemptuous act by the Respondents and/or their agents.

10. The subsequent transfer of the suit land to the second Respondent who later changed the suit land title to his names were all acts of deceit and contempt of this court's orders of 20<sup>th</sup> November 2018. The further acts disturbing the peace and quiet possession of the suit property by the Applicant or their assignees as demonstrated to be orchestrated through the connivance of all the four Respondents is also an act of contempt of the orders of court of 20<sup>th</sup> November 2018.
11. In particular the role of the third Respondent, the police officer in this contemptuous connivance is alarming since he holds a higher mandate to avert it. His said actions in this case must be referred to the Inspector General of police for further investigations and management.
12. It must be emphasized that court orders are never made in vain in a democracy like Uganda where the rule of law is espoused.
13. Based on the above, the application is allowed with the following declarations and orders:
  - i. The first, second, third and fourth Respondents were in contempt of this court's orders of 20<sup>th</sup> November 2018 when they destroyed the suit property and ejected the Applicants assignee who was living in the same from it.
  - ii. For this contempt, each of the Respondents shall pay a fine of Ug. shs: 50,000,000/= (Uganda shillings fifty million) or be committed to civil prison immediately for 6 months.

- iii. For the inconvenience occasioned to the Applicants, the Respondents shall jointly and/or severally pay damages of Ug. shs: 120,000,000/= (Uganda shillings one hundred twenty million) to the Applicants.
- iv. To halt their contemptuous acts, an injunction is issued maintaining the Applicants or their assignees on the suit property, permanently restraining any of the Respondents or their assignees from any interference with the Applicants said quiet possession of the suit property as agreed in the consent judgment and order.
- v. In addition, to avert the contemptuous actions, the Commissioner land registration is hereby directed to cancel the second Respondent or any other person that the second Respondent may have transferred to, from the land title of the suit property and transfer the same to the Applicants or an assignee of their choice.
- vi. Costs are awarded to the Applicants.

I so order.

**Lydia Mugambe.**  
**Judge.**  
30<sup>th</sup> October 2019.