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THE REPUBLIC OF UGANDA
IN THE HIGHCOOURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISC. CAUSE NO. 44 OF 2019

HON. MAJ. GEN (RTD)

10 **KAHINDA OTAFIIRE :::APPLICANT**

VERSUS

THE NEW VISION PRINTING AND

PUBLISHING COMPANY LIMITED :::::::::::::::::::::::::::::::::::::::RESPONDENT

15 **BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

RULING:

Hon. Maj. Gen (Rtd.) Kahinda Otafiire (*hereinafter referred to as the*
“Applicant”) herein brought this Application against The New Vision
20 Printing and Publishing Company Limited(*hereinafter referred to as*
the “Respiondent”); under the provisions of Section 98 of the Civil
Procedure Act Cap 71 (CPA); Order 52 Rules 1,2,and 3 of the Civil
Procedure Rules SI 71-1(CPR), for orders that a declaration be
issued that the Respondent is in contempt of the orders of this
25 Honorable court issued in H.C.C.S No. 661 of 2003; an apology to
the Applicant in the Respondent’s daily newspaper publications for

5 a period of one week, general, exemplary and special damages for
injured feelings and emotional distress; and costs of the this
application.

The application is supported by the affidavit sworn by the Applicant
and two other additional affidavits sworn by Hon. Mwesigwa
10 Rukutana then then Deputy Attorney General and Bugingo Wilfred
a businessman, respectively. The grounds are briefly that the
Applicant filed H.C.C.S No. 661 of 2003 in this court seeking,
among others, for orders that a permanent injunction against the
Respondent restraining it and/or its agents from making any
15 defamatory publications against the Applicant. The Applicant
obtained judgment in his favor and a copy of the same and decree
are attached and marked "A". That on 16th February 2019, the
Respondent violated the permanent injunction issued by this court
when it published a false headline in its newspaper informing the
20 public that the Applicant took over a Government ranch. The
Applicant attached copies of the headline and publications to his
affidavit. The Applicant avers that he is the registered proprietor of
the land referred to under the publications and therefore, did not

5 take over any Government ranch as falsely stated by the Respondent in its said publication. The Applicant attached copies of the certificates of title for the land to his affidavit in support.

Further, that the Respondent is in total disregard of this court's judgment and orders arising therein or has refused to cease the
10 publication of false and defamatory statements against the Applicant. That the Respondent's publications were made with intent to harm and recklessly disregard the truth to the public. That the continued defiant action and/ or refusal of the Respondent to cease authorizing any publication of false and defamatory
15 statements against the Applicant amounts to disobedience of lawful orders and therefore contempt of court. That it is fair and equitable that this court orders the Respondent to comply with orders issued in H.C.C.S No. 661 of 2003 and pays general and exemplary damages to the Applicant.

20 The Respondent filed an affidavit in reply sworn by Charles Etukuri. He averred that he is familiar with the publications dated 16th February 2019 and 12th October 2019 respectively, which are the basis of this application; and the circumstances surrounding the

5 information that culminated into H.C.C.S No. 661 of 2003. That he
was assigned by the Respondent the task of investigating and
reporting on the ongoing encroachment, occupation and
controversy surrounding the ownership of Jeru Stock Farm which
is a Government ranch located in Buikwe District, which is a
10 National Animal Genetic Resource Centre (NAGRIC) and Data Bank
for animal breeding that the Applicant is currently occupying.

Further, that he personally contacted the State Minister in charge
of Animal Husbandry, Hon. Joy Kabatsi, who expressed shock over
the Applicant's ownership claims over the stock farm and stated
15 that the Applicant had bought "air". That the Respondent learnt
that on 9th December 2010, the said Hon. Minister of State wrote to
Jeru Town Council requesting that all constructions and
developments on the land which had been designated as the farm
land be stopped. A copy of the letter was attached.

20 That on 21st January 2019 the Commission of Inquiry into Land
Matters wrote to the Jeru Resident District Commissioner (RDC)
and the area Police authorities directing that no person other than
the farm management should carry out any activity on the disputed

5 land. He attached a copy of the directive. That the Jeru RDC, Ms.
Jane Frances Kagayi, wrote a letter dated 13th February 2019
informing the said Commission of Inquiry the breach of its directive
by the Applicant's operatives. He attached a copy of the letter. That
the Applicant's operatives in breach of the directive raided the land
10 in issue and razed to the ground all buildings and property said to
belong to the Stock farm.

Also, that the deponent contacted the Applicant prior to all the
Respondent's publications in issue and the Applicant asserted his
lawful ownership of the land in dispute. That the Applicant's side of
15 the story was published in the Respondent's newspapers. Further,
that the Applicant confirmed after being contacted by the
Respondent that he was aware that his agents indeed demolished
property on the disputed land.

That the facts giving rise to H.C.C.S No. 661 of 2003 related to the
20 alleged involvement of the Applicant in the timber scandal in Congo,
and in the Article dated 16th February 2019, the Respondent did
not violate any orders or terms of the decree dated 27th March, 2006.
That the Respondent's newspaper articles dated 16th February 2019

5 and 12th October 2019 respectively are factually different from the matters that were litigated in H.C.C.S No.661 of 2003. That the Respondent has never been a party to any court cases or received any court injunction orders touching on the disputes and controversies over the ownership of the disputed Jeru Stock farm.

10 That allegations of defamation made against the Respondent by the Applicant are not true since the sources of disputes surrounding the ownership of the Jeru Stock Farm are self-evident and justify the said publications.

That as part of the Respondents' information gathering procedures,

15 the Applicant was given an opportunity to present his side of the story prior to the publication of the impugned newspaper articles. That the Respondent dutifully published matters concerning the land dispute without malice against the Applicant. That the suit articles which touched on matters of public interest enjoy qualified

20 privileged and are incapable of defaming the Applicant. That this application should be dismissed with costs.

Only counsel for the Applicant filed written submissions to argue the case which court has taken into account, along with the

5 evidence, in arriving at a decision in this ruling. The following issues were framed for determination;

1. Whether the Respondents are in breach of the decree issued in H.C.C.S No.661 of 2003.

10 **2. Whether continued publication of the articles in issue by the Respondent is in contempt of court.**

3. What remedies are available to the parties?

Resolution of the issues:

Issues 1 and 2 will be resolved jointly as they are interrelated.

15 **Issue No.1: Whether the Respondents are in breach of the decree issued in H.C.C.S No.661 of 2003.**

Issue No.2: Whether continued publication of the articles in issue by the Respondent is in contempt of court.

As stated earlier, the Respondent's counsel did not make any submissions and court only considered the affidavit evidence in
20 reply. It is called for to first determine the issue whether the impugned publications by the Respondent were defamatory of the Applicant.

5 The law relating to defamation and /or libel is well settled.
According to **Gatley on Libel and Slander, 8th Edition** at page 15
paragraph 31, it is authoritatively elucidated that;

10 ***“The gist of the tort of Libel and slander is the
publication of a matter (usually words) conveying a
defamatory imputation. A defamatory imputation is one
to a man’s discredit, or which tends to lower him in the
estimation of others, or to expose him to hatred,
contempt or ridicule or to injure his reputation in his
office, trade or profession, or to injure his financial
credit. The standard of opinion is that of right thinking
people generally. To be defamatory an imputation need
have no actual effect on a person’s reputation; the law
looks only to its tendency.”*** [Emphasis mine].

20 The question whether the words complained of are capable of
conveying defamatory meaning is a question that calls for the
decision of court. See: **Morgan vs. Odhams Press (1970) All ER
page 544.**) In **Onama vs. Uganda Argus (1969) EA 92**, the Court
of Appeal for Eastern Africa held that in deciding the question of

5 identity, the proper test is whether reasonable people who knew the Applicant would be led to the conclusion that the report referred to him. The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his credit. See: **Scott vs. Sampson (1882) 8 QBD**

10 **503.**

Bearing in mind the above principles of law, the question which court must now answer is whether the words complained of by the Applicant could or might be regarded as defamatory by a reasonable person of normal intelligence who has knowledge of the
15 circumstances; and whether the statements complained of can, on a plain ordinary and grammatical construction, bear the meaning attributed to them by the Applicant. According the Applicant, the words complained of are defamatory of him. Suffice to note that where words complained of are defamatory in their natural and
20 ordinary meaning, the plaintiff needs to prove nothing more than their publication. The onus will then lie on the defendant to prove, from the circumstances in which the words were used or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested

5 by the mere consideration of the words themselves.
The impugned publication marked 'A' attached to the affidavit of
Bugingo Wilfred, it is titled "*OTAFIIRE TAKES OVER GOVERNMENT
RANCH*". The term "take" is defined in the ***Black's Law
Dictionary 10th Edition*** as to obtain possession or control,
10 whether legally or illegally. Further, *Annexure B* to the same
affidavit, the publication of the Respondent alleges that the
Applicant has been accused of encroaching on Jeru Stock Farm.
Further publication marked *Annexure "C and D"* is also headed,
"OTAFIIRE MEN GRAB GOVT FARM". In *Annexure D*, the Applicant
15 is labelled as "an encroacher" on the farm by the Respondent's
publication.

When read jointly, these publications directly point to the fact and
convey the plain and ordinary meaning that the Applicant obtained
illegal possession and/or control of the said farm land. Further, the
20 publications portray the Applicant as a land grabber. The Applicant,
on the other hand, denies these explicit statements/ accusations
and contends that he is the rightful owner of the land in issue and
as proof he availed a copy of the certificate of title for the land
attached to his affidavit in support of the application.

5 The certificate of title duly shows that the Applicant is the registered proprietor of Plot 280 Block 295 land measuring 20.2330 hectares having been registered thereon on 22/03/2017 vide *Instrument Number MKO-00039864*. Until the contrary is proved, he remains the as the conclusive owner of the land pursuant to
10 Section 59 of the registration of Titles Act Cap. 229. Worthy of note is that the Respondent did not dispute the fact of ownership of the Applicant of the above described land in their affidavit in reply.

The additional affidavits of Bugingo Wilfred and Hon. Mwesigwa Rukutana, in support of the application, also show that the
15 publications by the Respondent lowered the Applicant's esteem among the right- thinking members of society. In paragraph 5 of the affidavit of Hon. Mwesigwa Rukutana, he states that upon reading the publication, he approached the Applicant to avail him with an account of details of publications as such behavior of taking over or
20 grabbing Government property is conduct unbecoming of a person holding any public office. Further, in paragraph 6, he depons that he was disappointed and embarrassed to learn that the Applicant with such a status can be lowered to become part of a game to

5 deprive the public of the truth. In paragraph 7, he further states that the wording of the headlines portrayed a lurid message to him and the public that the Applicant is a criminal who takes over and/or grabs Government property and is not fit and proper person to serve in any public office.

10 These two people, who swore the additional affidavits in support of the application, are people who regarded the Applicant highly so much so that when they saw the articles in the Respondent's newspaper, they were dismayed and disappointed that the Applicant could lower himself to the extent of taking what is not his.

15 The totality of the evidence leads to the finding of court that the statements published by the Respondent claiming that the Applicant had taken over, encroached and /or grabbed Jeru Stock Farm, were aimed at injuring his reputation by exposing him to hatred, contempt, and ridicule. Therefore, the impugned
20 publications by the Respondent were without doubt defamatory of the Applicant.

As regard contempt of court, the law is well established. In the case of ***Megha Industries Ltd vs. Conform Uganda Ltd H.C.M.C No.21***

5 **of 2014** court citing the case of **Hon. Sitenda Sebalu vs. Secretary General of the East African Community Reg. No. 08 of 2012**, held that for contempt of court to exist, there must be a lawful court order, the potential contemnor must have been aware of the court order, and the contemnor must have failed to comply
10 with the order or disobeyed the same. Also in ***Nambi vs. Lwanga Miscellaneous Application No. 213 of 2017***, court defined contempt of court and stated that contempt of justice consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice. That it also consists of a
15 failure to comply with a judgment or order of a court or breach of an undertaking of court. Also in ***Chuck vs. Cremer (1 Coop Tempt Cott 342)*** the court stated that;

20 ***“...a party who knows of an Order, whether null or irregular, cannot be permitted to disobey it... it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge or irregular. That they should come to the court and not take (it) upon themselves to determine such a question. That the course***

5 ***of a party knowing of an order, which was null and irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”***

Counsel for the Applicant submitted that it is not in contention that
10 the Applicant filed H.C.C.S No.661 of 2003 wherein the Respondent was a party to the suit. That the Applicant obtained judgment against the Respondent to cease any form of defamatory publications against the Applicant by the Respondent. That the court in that suit issued a permanent injunction restraining the
15 Respondent from publishing any defamatory statements against the Applicant. Counsel cited the case of ***Housing Finance Bank Limited vs. Edward Musisi Civil Application No. 158 of 2010 (Court of Appeal)*** where the court held that a party who knows of an order regardless of whether in the view of that party the order is
20 null or void, regular or irregular, cannot be permitted to disobey it by reason of what the party regards the order to be. That it is not up to that party to choose whether to comply or not to comply with such an order. The order must be complied with in totality in all

5 circumstances by the party concerned, subject to the party's right
to challenge the order in issue, in such a lawful way as the law
permits.

It is not open to doubt in the instant case that there exists a court
order dated 3rd April 2006 issued against the Respondent which
10 emanates from H.C.C.S No. 661 of 2003. In that suit h the
Applicant herein was plaintiff and the Respondent was the 2nd
defendant. The decree was issued in the following terms;

1. ***The Defendants doth pay the plaintiff 5,000,000/= being exemplary damages.***
- 15 2. ***Compensatory damages of 25,000,000/=.***
3. ***A permanent injunction against the Defendants restraining them from publishing any defamatory matter against the plaintiff.***
4. ***Interests on both general and exemplary damages at the***
20 ***rate of the court from the date of judgment till payment***
in full.
5. ***The plaintiff shall have costs of the suit.***

5 Of particular relevance is *Item 3* of the order which is a permanent
injunction against the defendants restraining them from publishing
any defamatory matter against the Applicant. The reading of the
said publication of the Respondent invariably shows that the
Respondent violated the order of permanent injunction issued by
10 this court. They published headlines in its newspaper informing the
public that the Applicant took over a Government ranch. Copies of
the headlines and publication as B and C to the affidavit of the
Applicant, show in no uncertain terms, what was intended and
meant by the Respondent to be understood by the readers and
15 reasonable ordinary persons reading the publications. The
inferences, expressions and insinuations that that the Applicant
took over any Government ranch as stated by the Respondent in
the publication were not only untrue but also were published in
total disregard of this court's judgment and orders arising therein.
20 The publications were false because the Applicant has
demonstrated proof that he is the duly registered proprietor of the
land referred to under the publication. The Respondent has
intransigently refused to cease the publication of false and
defamatory material against the Applicant. It would appear that the

5 Respondent's publication was made with no other intent but to harm the Applicant's reputation and recklessly disregard the truth to the public.

Having already found that the Respondent's publications were defamatory in nature, logically it follows that the acts of the Respondent were in breach of the said court order dated 3rd April 10 2006, and the continued publication amounts to nothing short of contempt of court.

It is the duty of court to ensure that its orders are not issued in vain or held in contempt especially by those to whom they are 15 directed for enforcement or compliance. The primary purpose of contempt power is to preserve the effectiveness and sustenance of the power of the courts. See: ***People vs. Kurz 35 Mich. App. 643, 656 (1971)***. The net effect is that the Respondent breached the terms of the decree of which it was aware of and hence is found in 20 contempt of court. Issue No.1 and 2 are answered in the affirmative.

Issue: No.3: What remedies are available to the parties?

The Applicant prayed for exemplary and general damages for the emotional, physiological torture and damage to the Applicant's

5 reputation in society as a result of the actions of the Respondents. Counsel for the Applicant cited the case of **Stanbic Bank (U) Ltd vs. Commissioner Uganda Revenue Authority H.C.M.A No.0042 of 2010** where it was held that civil contempt is punishable by way of sequestration, by a fine or an injunction against the contemnor.

10 Court notes that the award of general damages is within the discretion of court, and are awarded to compensate someone for the none-monetary aspects of the harm suffered. In **Stanbic Bank (U) Ltd & Anor vs. The Commissioner General URA** (supra) in which court relied on the decision of Salmon LJ, in **Jenison vs. Baker**

15 **(1972) 1 All ER 97** at pages 1001, a fine of UGX100 million was imposed as sufficient punishment to purge the contempt in that matter. However, the court did not award punitive damages. Also in **Megha Industries Ltd vs. Conform Uganda Ltd H.C.M.C No.21 of 2014** the court awarded exemplary damages of

20 UGX.300,000,000/= and fine of UGX.100,000,000/= for contempt of court orders.

Having found merit in this application and given the particular circumstances surrounding this case, especially where there

5 appears to be wanton behavior on part of the Respondent to publish
defamatory material against the Applicant, given the personality of
the Applicant who is retired UPDF General, a Cabinet Minister and
Minister of Justice & Constitutional Affairs (at the time of the
publication by the Respondent) and generally taking into account
10 the social standing of the Applicant in society, among all other
factors, this court award the Applicant general damages of UGX.
100,000,000/= (One hundred Million Uganda Shillings Only) to
atone for the physiological torture, inconvenience and the serious
damage to his reputation. Court further award the Applicant
15 exemplary damages of UGX. 50,000,000/= (Fifty Million Uganda
Shillings Only) to deter any further defamatory publication of him
by the Respondent. In addition, the Respondent shall pay a fine of
UGX.50,000,000/= (Fifty Million Uganda Shillings Only) for being
contemptuous of the court order. All the amounts awarded, as
20 damages and fine above, shall attract interest at a rate of 8% per
annum from the date of this ruling until payment in full. The
Applicant is awarded costs of this application.

BASHAIJA K. ANDREW

JUDGE
14/02/2020