**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISC. APPLICATION NO. 099 OF 2015**

**KHABUSI BUILDING CONTRACTORS & FURNITURE LTD:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**PPDA::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE:** **HON. JUSTICE STEPHEN MUSOTA**

DATE: 02ND DECEMBER 2015 AT 11:43:03AM

**RULING**

This is the ruling in an application by Notice of Motion under Section 98 of the Civil Procedure Act and 33 of the Judicature Act, Order 41r(2) (3) and Order 52 r(1), (2) and (3) of the Civil Procedure Rules for orders as stated in the application and costs of the application.

The application in the amended Notice of Motion supported by the affidavit of Andrew Kayaki, the 2nd applicant who swears the affidavit on behalf of the 1st and 3rd applicants. At the hearing, the applicant was represented by Mr. Wamukota Charles and the respondent by Mr. Kalemera John and Esther Kusiima.

Preliminary objections were raised by counsel for the respondent on two occasions but they were overruled and the rulings are on record. The background to this application is that the 1st applicant was among the five companies that bid for the construction of Kabwangasi Secondary School advertised by the Ministry of Education and Sports. However on the ground that in the process of biding, the applicants forged bid securities and as a result the respondent suspended them for three years from ever biding for government tenders.

The applicants were aggrieved by the decision of the respondent and felt that it was illegal, unfair, irrational, irregular and contrary to the cardinal principles of Natural Justice and successfully challenged the same in this court by way of Judicial Review in Misc. Cause 43 of 2014. An order was extracted on 27th October 2014 and given on 11th November 2014 lifting the suspension, prohibiting the respondents, their agents, assignees, successors in title or any other person claiming authority from implementing the decision of the respondents. However, it is now alleged by the applicant herein, the respondents have disobeyed the court orders in as far as they suspended the applicants again and on 6th March 2015 published the names of the applicants on the website of the 1st respondent and in the Red Paper Newspaper or as persons prohibited from bidding in any business of the Public Procurement and Disposal of Public Assets Authority.

The applicant deemed this to be in contempt of court order hence this application seeking for orders that;

1. The respondent’s property be attached and sold for disobedience of lawful orders.
2. That the 2nd respondent be detained in civil prison for disobedience of lawful orders.
3. An order that the respondents pay exemplary/punitive damages or compensation to the 1st applicant in the sum of 1, 500,000,000/- only for loss of business rendering its machinery redundant and injuring its reputation.
4. An order that the respondents pay exemplary/punitive damages or compensation to the 2nd and 3rd applicants in the sum of 700,000,000/- each amounting to 1.4billion for loss of business and inuring their reputation.
5. The respondents defined a sum of 200,000,000/- for contempt of court orders.
6. Costs of this application be provided for.

I have considered the application as a whole, the affidavits in reply, and submissions by both respective counsel and I find that there are only two issues arising from the application and these are;

1. Whether the respondent acted in contempt of the court order.
2. Where the applicant is entitled to the orders sought in the application.

**Issue 1**

Whether the respondent acted in contempt of the court order; contempt proceedings are Swiss generic proceedings so I take them seriously because they mean that the authority of this court is being questioned or challenged. Although such proceedings are undesirable, it appears, they have become very common in courts of late especially against government agencies yet all agencies of state are commanded to accord the court such assistance as may be required to ensure the effective of courts under Article 128(3) of the Constitution.

The principle relating to contempt of court orders are not well settled in Uganda especially in the area of civil contempt of court orders where such is not directed in the presence of court. However I shall state the principles which I came across from the American state of Michigan which I am persuaded to apply in this case;

First is that anything that is done as directed in an order of court is contempt of court order in my view. In America, contempt has been defined as a willful act or mission or statement that tends to impair the authority or impede the functioning of a court. This was in the case of ***In Re-contempt of Robertson Da-villa versus Fisher Corporation 2009 Michigan Application no.433 (1995),*** and I agree with them.

I also agree that the primary purpose of content power is to preserve the effectiveness and sustain the power of the court. The secondary purpose is to protect and enforce the party’s rights by compelling obedience to court orders and judgments. Civil contempt proceedings are appropriate where the court is able to restore the status quo. If the court is unable to do so, criminal contempt proceedings are appropriate. The elements of indirect civil contempt that must be proved for an application for contempt to succeed are; that there is the doing of a forbidden act or the failure to comply with an order of court. That this impairs the authority or impedes the functioning of the court.

That it was committed outside the immediate view and presence of the court. that the court can coarse compliance and the contemnor is under a present duty to comply with the court’s order and is in present violation of the court’s order and still has the ability to perform the act ordered by the court. Or that it is still possible to grant the relief originally sought by the court order.

The power to punish for contempt is hell some and carries with it the equally great responsibility to apply it judiciously and only when the contempt is clearly and unequivocally shown. (*see the case of People versus Matish page 384, Michigan (1971) ).*

It is also salient that defendants in contempt proceedings should be given every opportunity to exonerate themselves and be heard. Court’s authority to punish for contempt is inherent in judicial power vested in courts by the constitution of the republic of Uganda and Article 28(12). Civil Contempt Proceedings are only important when the respondent is in active contempt and there is an action or things that he can be required or coarsed to do. It is also important to note that the court order is a court order and it must obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If you allowed court orders to be ignored with impunity, this would destroy the authority of judicial orders which is the heart of all judicial systems.

All persons who choose to disobey court orders do so at their own peril and cannot say it is a mere technicality. This was the decision in ***Ambrit Goyale versus Aluchant Goyale & 3 Others Court of Appeal Civil Application No. 109 of 2004.*** It matters not whether the order is null, void, irregular or regular or lawful. The order cannot be permitted to be disobeyed. Any person who feels aggrieved by an order of court must bring their grievance to the attention of court and move the court to vary or set aside the same. Unless that is done, the person must comply with the court order. (*See* ***Housing Finance Bank Limited & Another versus Edward Musisi, Court of Appeal Civil Application 158 of 2010****).*

In the instant case, it was the submission of counsel for the applicants that there is a court order and I agree. Further that the respondents violated the order. The explanation given by the respondent is that all the allegations against them are falsehoods in as far as 20th March 2015; the applicants are not listed among the suspended providers.

They also explained that the actions of the Red paper newspaper are not the actions of the 1st and 2nd respondents so the application lacks merit and should be dismissed. The order of this court was very clear, it quashed the decision of the respondent suspending the applicants and also prohibited the respondents or its agents, assignees and successors in title from implementing the decision.

I am satisfied by the explanation of the respondents that the allegations of the applicants are misconceived. The applicants attached to the affidavit annexture “C” which was a publication of news by Red paper newspaper and annexture “D” which is a list of suspended providers as at 22nd January 2015. For annexture “C”, it was explained and I agree that the respondents are not responsible for the publications of the newspaper so there is no way they can be liable for actions of the red paper newspaper since it was not an official notice published by the respondents in the newspaper.

For annexture “D”, I tried to look through and re-read the notice several times but I did not find the names list as alleged. Therefore on a balance of probabilities, I am not satisfied by the evidence provided by the applicants that the respondents violated the court order and on that basis, I find that they are not guilty of contempt of court order. The applicants are no longer listed as suspended companies so it is business as usual and can compete for work normally without prejudice from the respondents.

Issue 2; whether the applicant is entitled to the orders sought in the application. Having resolved the issue 1 in the negative I will consequently find that the applicants are not entitled to the orders prayed for in the application. for the reasons I have stated herein, I will order that this application be dismissed with no orders to costs since the primary purpose of contempt of proceedings is to enforce court orders I so order.

**………………………….…………….**

**Stephen Musota**

**Judge**

**02/12/2015**