



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Misc. Civil Application No. 0131 of 2019

In the matter between

- 1. ONEN DAVID**
- 2. OBOTE CHRISTOPHER**
- 3. NONO ROBERT**

**APPLICANTS**

And

- 1. OTTO OCAN**
- 2. OKWERA ALBERT**
- 3. SABINO LUKERE**

**RESPONDENTS**

**Heard: 27 February, 2020.**

**Delivered: 8 June, 2020.**

**Civil Procedure — Contempt of Court**—I refers to an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it" — A civil contempt is designed to coerce the contemnor into compliance, whereas a criminal contempt punishes the contemnor. — Civil contempt is prospective because it focuses on getting the contemnor to comply with the court order in the future, while criminal contempt is retrospective because it focuses on punishing the contemnor for past conduct. — One of the key requirements in proceedings for contempt of court is notice of the existence of a clear and unambiguous court order and clear warning to the person to applies about what should not be done — Contempt of court cannot be reduced to a mere means of enforcing judgments, as the applicants by their prior applications seem to believe — The power should be used cautiously and with great restraint. — Execution — Part III of The Civil Procedure Act and Order 22 rule 8 (2) (j) of The Civil Procedure Rules — All proceedings in execution commence with the filing of an application for execution. Such application should be made to the Court which

*passed the decree or where the decree has been transferred to another Court, to that Court.*

---

## **RULING**

---

**STEPHEN MUBIRU, J.**

Introduction:

[1] This is an application made under section 98 of *The Civil Procedure Act* and Order 52 rule 1 and 2 of *The Civil Procedure Rules* seeking orders that the respondents be arrested and detained in civil prison for contempt of court. The background to the application is that the applicant sued the respondents in respect of a dispute over land parts of which are occupied by each of the parties. Judgment was delivered in the applicant's favour. The respondents appealed the decision to the High Court which delivered judgment in their favour, reversing the decision of the Chief Magistrate's Court. The applicants appealed further to the Court of Appeal, and hearing of the appeal has been pending for over three years now. In the meantime, the applicants applied for and an order of stay of execution was granted on 28<sup>th</sup> April, 2017. The applicants aver that the respondents have violated that order by going onto the land on or about 17<sup>th</sup> July, 2019, cut down trees and otherwise put the land in dispute to use. They contend that the *status quo* prior to the filing of the suit should be maintained until the final disposal of the appeal.

Respondents' reply in opposition of the application.

[2] By way of the 2<sup>nd</sup> respondent's affidavit in reply, the respondents are opposed the application. They contend that the High Court upon hearing their appeal, on 29<sup>th</sup> October, 2018 decreed the entire land in dispute to the respondents in a judgment delivered on 28<sup>th</sup> January, 2016. The status quo at the time was that the applicants occupied one part of the land while the respondents occupied the

other, and this has remained the position to-date. Despite the decision on appeal being in their favour, none of the respondents has taken any steps to enforce the decree. It is the applicants who instead have gone ahead to open up new gardens on the land. Instead of pursuing their appeal, the applicants have resorted to opening up numerous unfounded criminal cases and applications for contempt of court against the respondents. The activities complained of by the applicants are being undertaken on land that was occupied by the respondents even before the dispute and their activities thereon have not in any way altered the *status quo*. The applicants are abusing the order of stay of execution.

#### Arguments for Counsel for the Applicants.

[3] Submitting in support of the application, counsel for the applicants argued that the *status quo* pending the appeal is that the applicants are occupying the land in dispute and it should be maintained until the appeal is disposed of. It was unlawful for the respondents to have invaded the land in dispute and proceeded to cut down trees for timber, before they are put in possession of the land by execution of the decree. The pending appeal before the Court of Appeal has undergone conferencing as it awaits fixture of a hearing date by that Court's Registry, for whose delay the applicants cannot be blamed. The application should be allowed.

#### Arguments for counsel for the Respondents:

[4] In response, counsel for the respondents submitted that the applicants have two prior application of this nature, without success because they acknowledged that the respondents are not violating the order of stay of execution. The order of stay of execution only prevents the respondents from seeking to evict the applicants from the land in dispute. The respondents have not taken any steps towards eviction of the applicants despite the fact that the High Court decided in the respondents' favour. The respondents' activities are restricted to that part of the

land that was in their possession at the time of the decree on appeal. The alleged violation of the order has not been proved and therefore the application should be dismissed with costs to the respondents.

### Contempt of Court.

- [5] "Contempt of court" is a generic expression descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes (see *A. G v. Times Newspapers Ltd.* [1974] A.C. 273 at 307). In law, contempt of court is defined as an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it" (see *Principles of Criminal Law* 1 ed (Juta, Cape Town 1991) at 627; *R v. Almon* (1765) 97 ER 94 at 100; *Ahnee and others v. Director of Public Prosecutions* [1999] 2 WLR 1305 (PC) and *R v. Metropolitan Police Commissioner, Ex parte Blackburn (No 2)* [1968] 2 All ER 319 (CA). The recognition given to contempt is not to protect the tender and hurt feelings of the judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed.
- [6] Wilful disobedience to any judgment, decree, direction, order or other process of a court or wilful breach of an undertaking given to a court or the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) or any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, will constitute contempt of court.

[7] If the contempt primarily benefits the opposing party, it is civil. On the other hand, a criminal contempt primarily benefits the court itself, by vindicating the dignity or authority of the court. A civil contempt is designed to coerce the contemnor into compliance, whereas a criminal contempt punishes the contemnor. Civil contempt is prospective because it focuses on getting the contemnor to comply with the court order in the future, while criminal contempt is retrospective because it focuses on punishing the contemnor for past conduct. However, the fact that conduct occurred in the past does not necessarily imply that the contemnor must be held in criminal contempt. In a civil contempt sanction, the contemnor must hold the "keys to his cell," in that no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order, e.g. imprisonment until the contemnor complies with the court order. In criminal contempt, sanctions are fixed and the contemnor has no chance to avoid such sanctions once imposed. A contingent sanction, such as being jailed until compliance with a court order, serves to coerce the contemnor and benefits the opposing party hence it is for civil contempt while vindication of the court's authority by way of punishment of the contemnor is criminal contempt.

Proof of contempt of court:

[8] To be found in contempt, it must be proven that the party accused: (i) knew the order existed, (ii) had the ability to comply with the order but violated it knowingly, and (ii) lacks just cause or excuse for the violation. Civil contempt is a strict liability violation; all that must be proved is that the order was served on the respondent, and that a prohibited action (or a failure to carry out an order) occurred. Once the applicant has proved noncompliance with the court's order, by showing the existence of the order and the respondent's noncompliance, the burden then shifts, and the potential contemnor must prove inability to comply or justifiable cause. The purpose of a civil action for contempt is to ensure the respondent's compliance for the benefit of the applicant.

- [9] Criminal contempt on the other hand goes a step further, and requires proof that the person accused intended to interfere with or impede the administration of justice especially if it occurs in circumstances where the conduct amounts to public defiance, involves a public injury and this calls into play a penal or disciplinary jurisdiction to deal with criminal contempt (see *Phonographic Performance Ltd. v. Amusement Caterers (Peckham) Ltd.* [1964] Ch. 195). The principal theoretical basis of the distinction is that disobedience to the process and orders of the court in civil proceedings is said to be a civil wrong, a matter between party and party, enforcement being for the private benefit or interest of the party seeking enforcement, whereas impeding the administration of justice is a public wrong.
- [10] One of the key requirements in proceedings for contempt of court is notice of the existence of a clear and unambiguous court order. The law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally on him or her (see *Hon. Sitenda Sebalu v. Secretary General of the East African Community Ref No. 8 of 2012 (EACJ)* and *Stanbic Bank (U) Ltd and another v. Commissioner General Uganda Revenue Authority H.C. Misc. Application No. 42 of 2010*); and there must be prominently displayed on the front of the copy of an order served, a warning to the person on whom the copy is served that disobedience to the order would-be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by attachment of the assets of the body corporate and by imprisonment of any individual responsible (see *Republic v. Commissioner of Lands and 12 others, Ex Parte James Kiniya Gachira alias James Kiniya Gachiri, Nairobi HCMA No 149 of 2002* and *Jacob Zedekiah Ochino and another v. George Aura Okombo and 4 others*, [1989] KLR 165). The order must have been personally served upon the respondent against whom sanctions for contempt of court are sought to be enforced.

[11] It is a fundamental requirement to all proceedings for contempt of court that there was a clear and unambiguous court order. The order must state clearly and unequivocally what should and should not be done. This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning. In the instant case, the material part of the order allegedly violated by the respondents states as follows;

It is hereby ordered that the execution of the decree in High Court Civil Appeal No. 53 of 2014 be stayed pending hearing and final determination of Civil Appeal No. 62 of 2016 in the Court of Appeal.

[12] The import of the order is to restrain the respondents from executing the decree of the High court until final disposal of the appeal pending before the Court of Appeal. Execution is the enforcement of decrees and orders by the process of the court, so as to enable the decree-holder to realise the fruits of the decree. It is the process whereby an officer of court, usually a bailiff, is directed by an appropriate judicial warrant to enforce the judgment. The execution is complete when the decree-holder gets money or other thing awarded to him by the judgment, decree or order of the Court.

[13] Part III of *The Civil Procedure Act* and Order 22 rule 8 (2) (j) of *The Civil Procedure Rules* deal comprehensively with modes of execution of decrees. All proceedings in execution commence with the filing of an application for execution. Such application should be made to the Court which passed the decree or where the decree has been transferred to another Court, to that Court. The modes of execution of a decree under section 38 of *The Civil Procedure Act* and Order 22 rule 8 (2) (j) of *The Civil Procedure Rules* include; (a) by delivery of any property specifically decreed. Property may be movable or immovable; (b) by attachment and sale of the property or by sale without attachment of the

property; (c) by arrest and detention; (d) by appointing a receiver; (e) or otherwise, as the nature of the relief granted may require. This is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d). Execution therefore means the enforcement or implementation or giving an effect to the order or judgment passed by the court, using one of those authorised modes.

[14] In *Scott v. Scott* [1913] AC 417, the House of Lords identified a third form of contempt, contumacious civil contempt which is a hybrid of criminal and civil contempt. The proceedings, such as the ones in the instant case, are launched by the party as in civil contempt, but the character of the contempt has a criminal aspect so that the provisions of criminal contempt attach to it. Therefore, orders of court must be strictly construed and any ambiguities in the interpretation of the order claimed to have been flouted should be resolved in favour of the person accused of contempt. A strict interpretation in the instant case leads inevitably to the conclusion that the respondents, who have not initiated the process of execution of the decree, cannot be held in contempt of the order staying execution. The order staying execution in no way restricts the acts complained of by the applicants. The activities complained of neither constitute enforcement of the decree nor an attempt to do so, but rather are of the nature that is ordinarily addressed by an injunction, yet no such order is in force.

[15] Furthermore, the contempt power is a discretionary one. If courts were to find contempt too easily, a court's outrage might be treated as simply raising a storm in a teacup that might ultimately cheapen the role and authority of the very judicial power it seeks to protect. Contempt of court cannot be reduced to a mere means of enforcing judgments, as the applicants by their prior applications seem to believe. Courts have consistently discouraged its routine use to obtain compliance with court orders. The power should therefore be used cautiously and with great restraint. It is an enforcement power of last, rather than first, resort.



Order:

[16] In the final result, the application is misconceived and is accordingly dismissed with costs to the respondents.

Delivered electronically this 8<sup>th</sup> day of June, 2020

.....Stephen Mubiru.....

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the applicants : M/s Tumwesigye, Baingana and Co. Advocates

For the respondent : M/s Okello-Oryem and Co. Advocates