

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 41 OF 2019
(ARISING FROM MISC. APPLICATION NO. 0013 OF 2017)
(ARISING FROM CIVIL SUIT NO. 0053 OF 2015)

NDEGEYE JOSEPH APPLICANT

VERSUS

ANTHONY KAMUNTU..... RESPONDENT

RULING BY HON. JUSTICE GADENYA PAUL WOLIMBWA

The Applicant brought this Application by Notice of Motion under Articles 28 (12) of the Constitution, Section 98 of the Civil Procedure Act Judicature Act and 0.52 rr 1 and 2 C.P.R .

This application is seeking the following orders;

1. A declaration be issued that the Respondent is in contempt of court orders issued by this honorable court in Misc. Application No. 0013 of 2017.
2. The respondent be committed to Civil Prison for contempt of court orders
3. The respondent be ordered to demolish erected structures on the land.
4. That a further restraining order be issued against the respondent.
5. Costs of the application.

This application was supported by the affidavit of NDEGEYA JOSEPH but briefly, the grounds for the application are that:-

1. That in November 2015, the Respondent sued the Applicant and another vide Civil Suit No. 0053 of 2015 for declaration that the suit land is property of the respondent.
2. That the applicant/ first defendant in his written statement of Defense averred he had purchased the land from the respondent.
3. In June 2017, the applicant and another sought a temporary injunction against the respondent Vide Misc. Application No. 013 of 2017 restraining him and his agents from

trespassing, surveying and alienating the suit land until the main suit is heard and determined.

4. That on first of November 2017, the application was granted and a temporary injunction issued against the respondent in respect of the suit land.
5. That the court order was extracted and served upon the respondent and the District Police Commander, Kiryadongo Police Station.
6. That in contempt of the court order, the respondent has continued to cut trees on the land for charcoal (for sale) and firewood.
7. That in contempt of the court order, the respondent has erected huts on the suit land.
8. That if the application is not granted, the respondent's continued trespass will cause great prejudice to the applicant and the main suit will be rendered nugatory.
9. That it is in the interest of justice this application be granted. An appeal C.A 18/2012 was filed at the High Court and the Respondent was held to be a trespasser.

While denying the contempt alleged, the Respondent; Anthony Kamuntu, by an affidavit swore the following;

1. That the application now before this honorable court is merely frivolous and vexatious and amounts to an abuse of court process. That neither him nor his lawyer was served with the court process in Misc. Application No. 0013 of 2017 and that he only saw the application as an attachment marked "C" to the instant application.
2. That he was surprised to learn that the applicant had a court order against him whose roots and cause he had no knowledge of. That it is true he sued the applicant for among other things, a declaration that the suit land is his property.
3. That his physical address is Wakisanyi cell, Kidunya village, Kaduku Parish, Masindi Port county Kiryandongo District and not Rwenkonya village as claimed in the affidavit of service by Kyemba Ponsiano.
4. That according to Kayemba Ponsaiano's admission in paragraph 4 of the affidavit of service, he only served an order of temporary injunction upon a one Bernard Banturaki of m/s Newmark Advocates and he did not serve the court process of the application.
5. That execution of the order served on the police was recalled and halted by the police pending the production of a certified copy of the same which the applicant he has never done to this date. As such, the respondent cannot be seen to be conducting himself in a

manner amounting to contempt of court and that he was only erecting huts on his own land.

He stated that there was no trespass as he is only enjoying his land obtained under a Presidential grant and that the applicant shall suffer great prejudice nor shall the main suit be rendered nugatory as it is him who will suffer loss should the applicant be permitted to maintain trespass and vexatious and frivolous and claims on his land.

Although I directed the parties to file submissions, only the Applicant complied with my directive.

Issues for determination

The issues to determine in this application are-

1. Whether the Respondent is guilty of contempt of court.
2. What are remedies available to the parties?

Resolution of the issue

Issue No. 1: Whether the Respondent is guilty of contempt of the Court?

The law relating to Contempt of Court is now settled law in Uganda. Justice Mulyagonja, as she then was, in *Stanbic Bank (U) Ltd & Anor versus The Commissioner General – URA HCMA NO. 42 of 2010* while relying on Halsbury's Law of England, Vol.9 (1) fourth Edition, observed that:

‘Contempt of Court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which creates substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to Judgment, Orders or other process of Court and involving in private injury’

The condition necessary to prove contempt of court are:

1. Existence of a lawful order;
2. The contemnor's knowledge of that order; and,

3. The potential contemnors' failure to comply i.e., disobedience.

Counsel for the Applicant submitted that the applicant sought for a temporary injunction against the respondent vide Misc. Application No. 0013 of 2017 and a temporary injunction was issued on the 1st day of November 2017, against the Respondent in respect of the suit land.

He submitted that the Respondent was aware of the court order in Misc. Application No. 0013 of 2017 that was issued against him as the order was served on him and from his own admission in his affidavit in reply, where he referred to the order in paragraph 6 thereof. Counsel, further submitted that the same order was served upon the District Police Commander, Kiryandongo District and that the police informed the respondent of the same and advised him to obey the order. That to show that the respondent was aware of the order, he filed an application vide Misc. Application No. 39 of 2019 where he sought to set aside the orders in Misc. Application No. 0013 of 2017.

Furthermore, counsel for the Applicant submitted that the Respondent disobeyed the court order issued in Misc. Application No. 0013 of 2017, which was, forbade him and his agents from trespassing, surveying and alienating the suit land until civil suit No. 53 of 2015 is heard and determined. That the respondent in breach of the injunction order has continued to trespass on the suit land despite the pendency of Civil Suit No. 53 of 2015, by cutting trees on the land for charcoal for sale and firewood. That the respondent has further erected huts on the suit land as was admitted in paragraph 16 of the affidavit in reply. Counsel for the applicant relied on the case of Hadkinson vs. Hadkinson (1952) ALL ER 567 at 569 it was held that:

“ a party who knows of an order, whether null and void, regular or irregular cannot be permitted to disobey it.....it would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null and void, whether it was regular or irregular. That they come to court and not take upon themselves to determine such a question, that the course 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 court that it might be discharged. As long as it existed, it must not be disobeyed”.

Furthermore, counsel relied on the case of **Bell vs Tuhoy & Another (2000)3 ALL ER 975 at 981 para 22**, where it was held that an order made by a judge of unlimited jurisdiction, for instance in the High Court must be obeyed, and failure to observe it can amount to contempt of court, however irregular it might be unless and until it is reversed or set aside. Counsel invited court to make a finding that Respondent was guilty of contempt of court.

It is clear from the record of events that there is in existence a lawful court order stopping the Respondent from carrying out activities on the suit land. The Respondent certainly knows about the order as he stated in his affidavit in reply in paragraph 15 where he deponed that the court order was served on the District Police Commander but was recalled and halted by the police pending the production of a certified copy of the same by the applicant, which he has never done to date. Yet, despite that, the respondent has refused to comply with the order and instead continued to trespass on the suit land by cutting trees and erecting huts on the land. Furthermore, the Respondent certainly knows about the order as he has filed an application Vide Misc. Application No. 39 of 2019 seeking to set aside the orders in Misc. Application No. 0013 of 2017.

According to **Halsbury's Law of England Volume 1(1) 2001 paragraph 458** a person commits contempt of court if they refuse or neglect to do an act required by a Judgment or Order of the Court within the time specified in the Judgment or Order, or disobey a Judgment or Order, requiring a person to abstain from doing a specified act. Civil Contempt is punishable by way of committal or by sequestration¹. In **Wild Life Lodges Ltd vs. County Council of Narok and Another (2005) 2 EA344 (the High Court of Kenya)** held that:

“A Court of Law never acts in vain and such touching on contempt of Court take precedence over any other case of invocation of the jurisdiction of the Court”.

The court went on to say *that*;

“ It was plain and unqualified obligation of every person against or in respect of whom an Order was made by a Court of competent jurisdiction to obey it until that Order was discharged, and disobedience of such an Order would, as a general rule , result in the person disobeying it being in contempt and punishable by committal or

¹Halsbury's Law of England Vol 9(1) paragraph 492

attachment... a party who knows of an Order, whether null or valid, regular or irregular, cannot be disobeyed....in cases of illegal contempt, the breach for which the alleged contemnor is cited must not be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities”.

On the face of it, therefore, it can be said that the Respondent was aware of the court order and can be held in contempt if he is violating it. Be that as it may, the order issued and which was relied on by the applicant was vague as it did not disclose what the respondent was being restrained from doing on the suit land. The order that was badly drafted by the applicant only stated:

“That a temporary injunction does issue against the respondent in respect of the suit land”.

From this order and without reading the record out of which it arose, it is not clear as what exactly the respondent was being restrained from carrying on, on the suit land. For a person to commit contempt of court, the order complained of must be clear and drafted or couched in clear and unequivocal terms as not to leave any doubts in the mind of the person to whom it is addressed. In this case, the order fell short of this standard and it would therefore, be improper for me to cite the Respondent for violating a vague court order.

In view of this finding, I am unable to cite the Respondent for violating or acting in contempt of the injunction stopping him and his agents from doing certain things on the land.

What remedies are available to the parties?

Although I have not found the respondent liable for violating the temporary injunction because of vagueness of the order, I would like to direct the Respondent, now that he is fully aware of the scope of the injunction to comply with the order in its entirety. The Applicant is hereby directed to extract a court order of injunction, approved by the Registrar and have the same served on the Respondent and the Uganda Police for their attention. This order of injunction, for avoidance of doubt will not be used to demolish structures that the Respondent put on the land from 1st November 2017 up to 7th July 2020. The Respondent shall for avoidance of doubt cease committing the acts covered by the injunction.

Decision

In the result, the application is dismissed with costs with the following orders:

1. The Applicant will extract a temporary injunction approved by the court and serve the same on the Respondent and the District Police Commander, Uganda Police Force;
2. The Respondent will comply with the injunction without exception.
3. The injunction will maintain the status quo as at 7th of July 2020.

It is so ordered.



Gadenya Paul Wolimbwa

JUDGE

8th July 2020

This ruling will be emailed to the parties by the registry of the court on 8th July 2020.



Gadenya Paul Wolimbwa

JUDGE

8th July 2020