

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**MISC. APPLICATION NO. 26 OF 2020**

(Arising from Supreme Court Civil Application No. 3 of 2018)  
(Arising from Supreme Court Civil Application No. 2 of 2018)  
(Appeal from the Court of Appeal No. 130 of 2015)  
(Arising from High Court Civil Suit No 115 of 2020)

Before Single Justice Faith Mwendha, JSC

Ismail Dabule ..... Applicant

**Versus**

(1)Kampala District Land Board  
(2)Yusufu Nsibambi  
(3)Martha Komugisha  
(4)Karuhanga John  
(5)Tayebwa Thomas

..... Respondents

**RULING OF COURT**

This application was brought under Rule 2(2), 42 (1 &2) 43(I) of the Judicature (Supreme Court Rules) Directions S1 13 – 11.

The Application sought the following orders:-

- (1) An arrest warrant doth issue against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and their agents for violation and being in contempt of Court orders issued on 27<sup>th</sup> March 2018 by Justice R. Buteera, Justice of the Supreme Court with knowledge of the matters in Court.
- (2) That each respondent pay a fine of Ug.Shs200,000,000/= to the Court and compensation of Ug.Shs100,000,000/= to the applicant by each of the respondents.

(3) The respondents stop any further violation of the Court Order and the title issued in contempt of Court Orders be cancelled.

(4) Costs of the application be provided for.

It was supported by the grounds as deponed by the applicant briefly as follows:-

- (1) That this Court issued an interim order of stay of execution on 27<sup>th</sup> March 2018 in respect of Civil Appeal No 130 of 2015 restraining anyone from alienating or in any way disposing of the disputed property known as LRV 194 Folio 13 at Plot 21 Kampala Road pending the hearing and disposal of Civil Application No.2 of 2018 still pending in this Court.
- (2) That on 12<sup>th</sup> February this Court heard the interim Application for the Order of Stay of execution stopping the applicant and anyone from further alienation in anyway, disposing of the land.
- (3) That on the 13<sup>th</sup> February 2018, the Secretary Kampala District Land Board Ms Komugisha Martha wrote to the applicant inviting him for a meeting in order to get update on Court progress. Annexure Marked "B"
- (4) That on 14<sup>th</sup> Feb 2018, through his lawyers wrote explaining why they could not attend the meeting (A blind copy of the letter was attached marked "C")
- (5) That on 21<sup>st</sup> Feb 2018 the 3<sup>rd</sup> respondent invited the Applicant for a meeting to discuss the status of the case since they knew Plot 21 Kampala Road was a subject of litigation and the appeal had been concluded (copy of mutation were and earlier letter from the respondent were attached marked "D")
- (6) That the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents were present in the meeting and were informed of the Court Order.



- (7) That the respondents in total disregard and in contempt of the said order, soon after fraudulently created a new title on Plot 21 Kampala Rd. the subject of the appeal.
- (8) That the title was created on 17<sup>th</sup> May 2018 and back dated 9<sup>th</sup> March 2018 disputing the subject matter of the Appeal as LRV KCCA 372 Folio 19 Plot 21 Kampala in an attempt to completely allocate the same with full knowledge of the Court order issued on the 12<sup>th</sup> day of February 2018.
- (9) That the respondents were fully aware that the Applicant has the original title for the said land as he was the sitting tenant and the Court had issued an order to stop any dealings on that land.
- (10) That the actions of the respondents were contemptuous against the Court order inter alia.
- (11) That this Court should order the respondents to pay the applicant Shs.100,000,000/= in compensation for contempt and a fine to Court of Shs200,000,000/= each and or serve a prison term of 6 months for their actions of contempt of Court.

Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> respondents filed affidavits in reply opposing the application as follows:

#### **1<sup>ST</sup> RESPONDENTS AFFIDAVIT REPLY**

- (1) That the 1<sup>st</sup> respondent was never a party to **Civil Suit No. 155 of 2010 Ismail Dabule v. Patrick Kaumba Wiltshire Civil Appeal No. 130 of 2015 in the Court of Appeal and Misc. Application No 2 and 3 of 2018 Patrick Kaumba v. Ismail Dabule**
- (2) That in paragraph 9 of the affidavit in support. The 1<sup>st</sup> respondent deponed that the order referred to is dated 9<sup>th</sup> April 2018 which was a month after the grant of the lease on the suit land to the 5<sup>th</sup> respondent (defendant) (See paragraph 9 of the affidavit)

(3) That the said order was never served on the 1<sup>st</sup> respondent in any way.

(4) That the applicant is not entitled to be granted any of the reliefs against the 1<sup>st</sup> respondent since there is no proof of contempt by way of not obeying any Court orders.

**2<sup>nd</sup> and 3<sup>rd</sup> Respondents reply:**

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed a joint reply deponed by one Martha Komugisha the 3<sup>rd</sup> respondent. She denied the applicants allegations save for those sue exactly admitted.

She stated in regard to paragraph 1 - 4 of the affidavit in support of opposition, that the applicant had no locus standi to maintain the application. That there is no order rendered by this Court in the applicants favour, against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents touching the subject matter of the suit or restraining any action in respect of the suit land that the applicant claims to constitute contempt on their part. Neither was the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' party to Civil Application No. 3 of 2018 which was between the applicant and Patrick Kaumba Wiltshire and Ismail Dabule the applicant which was the basis of the instant application.

That the order indicated that it was extracted on 9<sup>th</sup> April 2018, but was never served on the 2<sup>nd</sup> and 3<sup>rd</sup> respondents or the offices of the 1<sup>st</sup> respondent where the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondent used to work as chairman and Ag. Secretary of the 1<sup>st</sup> respondent respectively.

That neither the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are agents or servants of the applicant or persons claiming under the applicant or under the judgment in Civil Appeal No 130 of 2015. That none of them have acted in a manner disobeying the said order among others.

At the hearing, the Applicant was represented by Counsel Omongole Richard. The 1<sup>st</sup> respondent was represented by Counsel Joan Nakabito, 2<sup>nd</sup>



and 3<sup>rd</sup> respondent were represented by counsel Kyaze, and the 4<sup>th</sup> respondent was represented by Counsel Akim Babu.

**Submissions:**

Counsel for the applicant submitted that the respondent had full knowledge of the interim order of stay of execution issued on the 12/02/2018. He relied on **Col. Rtd Dr. Kiiza Besigye v. Attorney General Constitutional Petition No 33 of 2011**, where the Court held that Dr Besigye was in contempt and argued that, the order amounted to a judgment in rem.

He also relied on the case **Hadikison v. Hadikison (1952) ALL E.R. 567** where it was inter alia held that, "A party who knows of an order, whether null or irregular cannot be permitted to disobey..." Further Counsel submitted that Patrick Kaumba Wiltshire **instituted Civil Appeal No. 130 of 2015** in the Court of Appeal and was dismissed. That still Patrick Kaumba instituted Misc. Application No 2 and 3 of 2018 for an order of stay of execution and interim order respectively. He further submitted that on the 12<sup>th</sup> February 2018, the Court heard the interim order application and it was granted on 28<sup>th</sup> March, 2020 stopping the applicant and any one from further alienating or in any way disposing of the land. The order was annexed as "A" (see document titled applicants submissions on contempt of Court dated on the Court stamp 4<sup>th</sup> /Nov/2020.

The first respondent raised preliminary objections in the submissions filed on 6/11/2020 as follows:-

- (1) That the application was an abuse of Court process and ought to be dismissed with costs.
- (2) That the application had no locus standi to maintain the instant application as there was no order rendered by this Court in his favour touching the subject matter of the suit or restraining any action in respect of the suit land that the Applicant claims to constitute contempt by the respondents.

- (3) The order sought to be relied on by the applicant was dated 9<sup>th</sup> April 2018 and it's against the applicant as it specifically stated, "An interim order to restrain the respondent (Ismail Dabule), his agents, savants and anyone claiming under him or under the judgment **in Court of Appeal Civil Appeal No. 130 of 2015** from alienating or in any way disposing of disputed property known as **LRV 194 Folio 13 at Plot 21 Kampala Road**"
- (4) This was an order in personum and against the applicant in the instant application. He cannot enforce the same against the respondents who were neither party to the suit nor the same was brought to their attention.

Counsel for the 1<sup>st</sup> respondent prayed that the application be dismissed with costs to the respondents because the applicant had not locus standi to maintain the action against them.

Counsel for the 1<sup>st</sup> respondent without prejudice to the preliminary objection raised submitted on the issue of contempt. He argued that in order for a claim of contempt to succeed there are conditions to be satisfied. The applicant had the burden to prove that there was

- (a) A lawful Court Oder
- (b) That the **contemnor** had knowledge of the order
- (c) That there was proof that the contemnor has the ability to comply.
- (d) That the contemnor failed to comply.

Those conditions were given in the authorities relied on by Counsel for the respondent quoted below.

He relied on the case of **Hon. Sitenda Sebalu v. Secretary General for the East African Community Ref. No 8 of 2012**. The Court quoted Halsbury Laws of England as to definition of contempt as follows, "**it is Civil contempt to refuse or neglect to do an act required by judgment or order of the Court within the time specified in that judgment, or**



**disobey a judgment or order requiring a person to abstain from doing a specific act”**

**The Court further stated that it’s the plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it, unless until it is discharged.**

Counsel also relied on the Authority of **LC Chuck and Carrier [1896] ER885** where it was held,

**“A party who knows of an order whether null or void regular or irregular, cannot be permitted to disobey it...”**

Counsel further submitted inter alia, that the 1<sup>st</sup> respondent was not a party to **Civil Suit No. 155 of 2010 in which Civil Appeal No. 130 of 2015** of the Court of Appeal arose and Misc. Application 2 and 3 of 2018 **Patrick Kaumba Wiltshire v. Ismail Dabule**.

That the order was not served on them having been not party. He argued that the authorities relied on by the applicant i.e. **Constitutional Petition No. 33 of 2011** (Supra) and **Constitutional Petition No. 1 of 2016 Amaama Mbabazi v. Yoweri Kaguta Museveni and others**, (supra) were distinguishable as the judgment were judgment in rem which is not the case in the instant case. The ruling in the instant case he submitted was a ruling in parsonum, it was against the applicant personality and specifically so he cannot turn round and enforce it against the respondents. There was no proof of knowledge on one part.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents submitted among others that this Court issued an interim order of stay of execution on 27/03/2018 in respect of **Civil Appeal No. 130 of 2015** restraining the applicant (respondent) in the application for stay of execution) and anyone claiming under him from disposing of the disputed property LRV 194 Folio 13 of Plot 21 Kampala Road pending the hearing and determination of the main application No. 2 of 2018 and this was the order claimed to have been disobeyed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the instant application.

He contended that the burden of proof for contempt was upon the applicant to the required standard. The standard of proof is above the standard in ordinary Civil case but not beyond reasonable doubt as was held in the **Hon. Sitenda Sebalu** case cited (supra). Counsel further submitted that the order was there and was extracted on 9th April, 2018.

He submitted that the order did not amount to a judgment in rem so as to bind all persons within the jurisdiction of Court on the subject matter. The order was directed to the applicant who was respondent in Misc Application No. 3 of 2018 and only affected anyone claiming under the respondents' title so it was an order in personum. It was directed to the applicant his agents or servants or anyone claiming title under him.

He submitted that it was not proved that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were servants or agents or were claiming title under him. He further submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were not privy to the suit between **Patrick Kaumba v. Ismail Dabule**. He argued also that there was neither service of Court order on them to claim that they had knowledge of it.

Counsel for the 4<sup>th</sup> respondent pointed out that Counsel for the Applicant submitted only on one issue – whether the respondents were liable in contempt of Court. JS

He relied on the Presidential Election Petition No. 1 of 2019, **Prof Fredrick Ssempebwa & Others v. Attorney General** at page 23, where the Court observed that before any conduct can be found to amount to contempt of Court the following grounds have to be proved:

- (a) An order was issued by Court
- (b) The order was served or brought to the attention of alleged contemnor
- (c) There is to be proof that the contemnor had the knowledge of the order.
- (d) That the contemnor failed to comply and failure was wilful or malafide).

Counsel argued in brief on the issue whether the order was served or brought to the attention of the 4<sup>th</sup> respondent, to the effect that the



applicant made empty averment in para 9 of the affidavit in support of the application. That the applicant claimed that he attended a meeting with the 4<sup>th</sup> respondent wherein he brought in the existence of the Court order to his attention, but the list of those attending was not attached not even the minutes were attached. As for the issue of non-compliance, it was clear that that order was made specifically against the applicant so there was no way the 4<sup>th</sup> respondent could have complied with it.

He prayed that the application be dismissed with costs to the 4<sup>th</sup> respondent.

### **Consideration of the Application**

The application was inter alia brought under rule 2(2) of this Court rules.

It provides, **“Nothing in these rules shall be taken to limit or otherwise affect the inherent power of the Court of Appeal to make such order as may be necessary for achieving the ends of justice or prevent abuse of the process of any such Court, and power shall extend to setting aside judgments which have been proved null and void after they have been passed and shall be exercised to prevent an abuse of the process of any Court caused by delay.”**

Preliminary objections were raised by the 1<sup>st</sup> respondent counsel as follows:-

- (1) That the applicant had no locus standi to sustain this application.
- (2) Whether the applicant could sustain an action of contempt against the respondents.

What is locus standi? This issue was raised in a number of case including **Auto Garage v. Motokov [1971] E.A. 514**. It was held among others that “a plaintiff has to show that the plaintiff enjoyed a right, a right was violated by the defendant and the plaintiff suffered damage.”

In the essence locus standi means to have legal standing which gives way to the cause of action demonstrated in the plaint and proved on a balance of probabilities.

In the case of **Emmanuel Lukwajju v. Kyagwe Coffee Curing Estates Ltd and Commissioner Land Registration Civil Appeal No. 187 of 2014** (Court of Appeal decision) the learned Justices of the Court of Appeal inter alia (which is good law) held “an inquiry into the existence of the locus standi is therefore a question of law, the rationale behind ... is to avoid the abuse of Court process by litigants who have no legal standing, yet wish to engage Courts time. Where the locus standi of a party is in dispute by another, the Court is obliged as a point of law to inquire into the dispute and pronounce itself at the earliest opportunity to avoid unnecessary delay, embarrassment and or costs among other things.”

I carefully read and studied the Notice of Motion and the affidavits in support and rejoinder, by the applicant, I also read the affidavits in reply of all respondents save the 5<sup>th</sup> respondent who never appeared at all.

I considered the submissions of all parties I found the following:-

- (1) The applicant in the submissions stated that, following litigation in the High Court under Civil suit No. 155 of 2010, Patrick Kaumba instituted Civil Appeal No. 130 of 2015 in the Court of Appeal, that was dismissed and the orders of the trial Judge were upheld. SS

That Patrick Kaumba instituted Misc. Application 2 and 3 of 2018 for an order of stay of execution and interim order.

That on the 12<sup>th</sup> February 2018 this Court heard the Application No. 3 of 2018 for the interim order of stay stopping the applicant and any one from further alienating or in any way disposing of land. A copy of the order was attached Anexture “A”

On perusal of the order, Anexture “A” I observed that Counsel had left out the correct wording of the Order. The parties were:



Patrick Kaumba Wiltshire – Applicant.

And

Ismail Dabule - Respondent

**ORDER**

**... it is hereby ordered as follows:-**

**An interim order to restrain the respondent, his agents, servants or anyone claiming under him or under the judgment in Court of Appeal No. 130 of 2015 from alienating or in any way disposing the disputed property known as LRV 194 Folio 13 at Plot 21 Kampala Road is granted pending the hearing and disposal of Civil Application No 3 of 2018.**

Dated 9<sup>th</sup> April 2018

But he instead wrote, ... interim order of stay stopping the applicant and anyone the word any one was left hanging instead of writing anyone claiming under him ...”

It is clear from the reproduced order that

- (1) The respondents were not party to that application
- (2) The order was directed to the applicant, his agents, servants and those claiming title under him.
- (3) It was in favour of Patrick Kaumba Wiltshire obviously not the applicant so the applicant could not claim that he had a legal right which could facilitate a cause of action to sustain the action against the respondents who were not party to the application. Counsel for the applicants argument that it amounted to an order in rem cannot stand. And there was no cause of action against the respondents. Counsel for the applicant misrepresented affidavit in support and submissions in the material particular to appear as if it was an order amounting to judgment in rem but, the

order spoke for itself - he omitted some parts as seen in his pleadings/submissions.

This amounted o falsehood and Court cannot ignore it. On that basis above the application would fail.

- (2) The cases the applicant relied on of Col. Rtd Dr. Kiiza Besigye (Supra) and Amama Mbabazi to support his claim of the order being an order in rem could not be applicable. They are highly distinguishable. I therefore accept Counsel for the 1<sup>st</sup> respondent, 2<sup>nd</sup> and 3<sup>rd</sup> respondents that they are not applicable. He cannot be allowed to enforce an order which was against himself and then turn round to enforce it against the respondents who were never parties.

Its trite law that contempt proceedings can only be successful when it the following conditions are satisfied.

- (1) There is a lawful Court order
- (2) Knowledge by the contemnor of the order
- (3) Proof that the contemnor has the ability to comply
- (4) The contemnor failed to comply.

**See cases relied on above**

**Hon. Sietenda Sebalu v. Secretary General of the East African Community**

**Prof. Fredrick Sempebwa & others v. Attorney General**

Those conditions presuppose inter alia that there has been effective service on the contemnor, when the applicant had locus standi which was not the case in the instant case. The burden of proof lies on the applicant to prove his or her case on a standard not of ordinary Civil cases by higher though not on the standard beyond reasonable doubt. See Hon. Sitenda Sebalu (supra).



From the above foregoing it is clear that the applicant lacked locus standi to sustain a cause of action against the respondent for contempt of Court. The application was an abuse of process of Court.

Accordingly this application is dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

Before I take leave of this matter, I was displeased with the lack of professionalism of Counsel for the Applicant. Going to the extent of falsifying a Court Order, is beyond any reasonable persons understanding. Counsel is warned against this conduct because he knows that he is an officer of Court much as he is engaged by a litigant.

Dated at Kampala this .....26<sup>th</sup>..... day of .....November.....

.....*Mwondha*.....

Mwondha

**JUSTICE OF THE SUPREME COURT**