

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS APPLICATION NO. 004 OF 2021

(Arising from civil suit No. 10 of 2020)

KISITU FRANCIS :::APPLICANT

VERSUS

- 1. NAMUTEBI JOWERIA**
- 2. NOORDEEN KIZITO**
- 3. KIBUUSE GODFREY:::RESPONDENTS**

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BEFORE: HON. JUSTICE OYUKO ANTHONY OJOK

RULING

This is an application brought by Notice of Motion under **Article 28 (12) of 1995 Constitution, Section 98 of the Civil Procedure Act, Section 33 Judicature Act and Order 52 rr 1 & 3 of the Civil Procedure Rules** against the Respondents seeking for orders that:-

- a) The Respondents be arrested and committed to Civil Prison for contempt of Court order issued by this Court on the 13th day of November, 2020.
- b) The Respondents and their agents be ordered to comply with the Court Order and vacate the suit land with immediate effect.

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c) Costs of this Application be provided for.

Representation

The Applicant was represented by Counsel Luzige Joseph and Ms Jackeline Nandulya from Luzige, Lubega, Kavuma & Co. Advocates, the Defendants/Respondents were absent despite the fact that service was effected on them and no reply was made.

Submissions

Counsel for the Applicant prayed that since service was effected by a court process server and the affidavit of service on Court record he prayed to proceed *ex parte* under **10 0.9 R20 1 (a) of the Civil Procedure Rules** and Court allowed his prayer.

He submitted orally that this application is supported by the affidavit of Kisitu Francis, but briefly are;

- 1) That I was sued by a one Kibuuse Geoffrey vide Civil Suit No. 10 of 2020 arising from Administration Cause No. 146 of 2019.
- 2) That the said Kibuuse Geoffrey then filed Misc. Application No. 09 of 2020 seeking among others, a temporary injunction whereupon Court issued an order maintaining the status quo on the suit land.
- 3) That by a copy of the said order, Court ordered that the status quo of the suit land comprised in Block 246 Plot 16 land at Kumbya, Buwama Mpigi District be maintained pending the hearing of Civil Suit No. 10 of 2020.

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- 4) That at the time the Court issued the order, the Applicant was in possession of the suit land where he was collecting money from Sand mining activities and had together with the other beneficiaries licensed the 1st Respondent to mine sand while remitting funds to the beneficiaries.
- 5) That after obtaining the said order maintaining the status quo, the 3rd Respondent waved it in the faces of the 1st and 2nd Respondents and used it to stop them from further extraction of sand.
- 10 6) That thereafter the 3rd Respondent told them that since he is the one who had extracted the said order, Court allowed him to deal with them directly whereupon they all executed a fresh mining agreement.
- 7) That I was advised by my Lawyer, Nandulya Jacqueline which advise I verily believe to be true by virtue of her legal training and expertise that the said Court Order operates in Rem and as such, binds all parties; the Applicant, Respondents, the entire world or any other person acting on instruction or authority of the order.
- 20 8) That the Respondents were aware of the Court Order and acted in contempt of the same with impunity and contemptuous of the Court Order warranting remedial and punitive action of committing them to civil Prison.
- 9) It is in the interest of justice that the orders sought herein be granted.

Counsel submitted that this is an application brought under the above law and seeks the following orders:

The Respondents be arrested and committed to Civil Prison for contempt of Court Order issued on the 13th day of November, 2020.

He also submitted that, the application seeks for an order that the Respondents and their agents be ordered to comply with the Court Order and vacate the suit land with immediate effect and costs be awarded to the Applicant.

Counsel further submitted, that this application is supported by the affidavit of the Applicant (Kisitu Francis), and relies on all the contents of the Affidavit.

On Paragraph 3, counsel submitted that, the person abusing the order was aware of it and obtained by the 3rd Respondent. The order was abused by changing the status quo and by evicting the Applicant from the suit land. The Respondent acted with impunity as the Applicant was in possession of the suit land .

Paragraph 4 and 6, states that the status quo was changed and the Respondent abused the Court Order.

Paragraph 7 states that after extraction of the Court Order they continued extracting sand.

Counsel submitted that Musisi a court staff was directed by this Court to visit the suit which he did and found that the extraction of sand was on going. See copies of the photographs.

Counsel submitted that in view of **Misc. Application No. 42 of 2010 Stanbic Bank & ors vs Commissioner Uganda Revenue Authority**, she defined that contempt of Court amounts to unfortunate occurrence which basically involves abuse and non-compliance with orders of Court. A party who knows of an order whether the order is null or irregular cannot be permitted to disobey.

Counsel concluded that, Court be pleased that the Applicant has proved his case, that the order was obtained and within the knowledge of the Respondent and they have abused it with impunity. He also said that the Applicant has proved that there was contempt of Court and Court sent Musisi a court staff to visit the scene, who confirmed sandmining activities are ongoing.

He prayed that the Respondents be committed to civil prison for six months or permit what Court deems fit.

He referred to **Section 14 (2) (c) of the Judicature Act**, that enjoins Court where a penalty is not prescribed to exercise your discretion in the interest of justice.

10 Lastly Counsel submitted that, since the Respondents have chosen not to appear in this case, we have the duty to pursue the case. They're not coming to Court is further impunity.

Resolution

Having listened to the oral submissions of Counsel for the Applicant I make my findings as below.

Indeed its true Court issued an order that was prayed for by the Respondent in their application and the said application was granted and the order was issued on 19th November 2020.

20 It's not in doubt that Court ordered Musisi to go and find out what activities where recently carrying out on the suit property.

A report and photo's where tendered in Court and there was proof that sand mining was being carried out by the Respondents and their agents.

In **Halsbury's Laws of England Vol.9 (Ed.) at paragraph 402 and 241**, Contempt of Court can be classified as either (1) criminal contempt, consisting of words or acts

which impede or interfere with the administration of which create a substantial risk that the course of justice will be seriously impeded or prejudiced or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to judgment orders or other, and involving private injury.

In the case of **AmritGoyalVsHarichardGoyal&3 others Civil Appln. No. 109 of 2014.**

10 It was stated that a Court order must be obeyed and respected as ordered unless set aside or varied. It is not a mere technically that can be ignored. If we allow Court orders to be ignored with impunity, this would destroy the authority of Judicial Orders which is the heart of all judicial system.

In the instant application I agree with Counsel for the Applicant, that the Respondents disobeyed the Court orders that were issued by Court to maintain the status quo until the determination of the main suit.

I hereby order that the Respondents be committed to Civil Prison for a period of 3 (three)months,and the money that was collected from the sand mining from the time the order was issued by the Registrar to date be deposited in Court , the status quo should be maintained until the determination of the main suit.

Costs are hereby awarded to the Applicant and the main suit should be fixed immediately. I so Order.

20 Right of appeal explained

Hon. Justice Oyuko Anthony Ojok

Judge

Dated this 29th day of April, 2021