

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

MISC APPLICATION NO. 0051 OF 2023

(ARISING FROM MISCELLANEOUS APPLICATION NO. 0040 OF 2023)

5 (ALSO ARISING FROM CIVIL SUIT NO. 0015 OF 2019)

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1. BYARUHANGA OJOK VICTOR
 2. ASHIMWE KWIRYARA
 3. KYAMANYWA SWAIB APPLICANTS

Versus

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1. MASINDI DISTRICT LOCAL GOVERNMENT
 2. HON. KIIRYA
 3. HON. TUMWINE DENIS
 4. HON. NAMANDE GLADYS
 5. HON. MWAMBU WILLIAM RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma

20 RULING

This application was brought under Sections 38 (3) (a), (b) and 39 (2) of the Judicature Act Cap 13, Sections 64(C) and 98 of the Civil Procedure Act Cap 71 and Order 52, rules 1 and 3 of the Civil Procedure Rules S.I 71-1 seeking for orders that;

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1. The 1st respondent's agents and servants to wit; Hon. Kirya Moses, Hon Tumwine Denis, Hon. Namande Gladys and Hon. Mwambu William be committed to civil prison for violating the order of court in Miscellaneous Application No. 0040 of 2023 which was issued against the respondent, its agents and servants from moving a motion to disband the applicants who are members of the District Service Commission (DSC) pending the hearing and disposal of Miscellaneous Application No. 0039 of

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 - 2. The contemptuous minutes of the council sitting that sat on the 27th day of July, 2023 be quashed and set aside.
 - 3. Costs of the application be provided for.

BACKGROUND

5 The applicant filed Miscellaneous Application No. 0014 of 2023 for judicial review and Miscellaneous Application No. 0039 of 2023 with prayers for a temporary injunction restraining the respondent (Masindi District Local Government) and or her agents, servants from moving a motion to disband the applicants who are members of the Masindi District Service Commission (DSC) pending hearing and disposal of the main application for judicial review.

10 Ruling in Miscellaneous Application No. 0039 of 2023 was granted in favour of the applicants hence this application for the above prayers. The application was supported by an affidavit sworn by Mr. Byaruhanga Ojok Victor in his capacity as the 1st applicant and on behalf of the other applicants. The grounds of the application are as below;

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- a) That this honorable court issued an interim order against the 1st respondent inclusive of her agents and servants restraining them from moving a motion to disband the applicants who are members of the District Service Commission pending the hearing and disposal of the main application judicial review.
 - 20 b) That the said order was issued in presence of the 1st respondent's Deputy Chief Administrative Officer Mr. Obia Owii Robert and its council and the same was subsequently served on the respondents.
 - c) That the respondents expressed knowledge of the order at the impugned council sitting and even reflected it in the contemptuous council minutes.
 - 25 d) That in total disregard and contempt of the said court order dated 26th July 2023, the respondents have since the order was issued on the 26th day of July, 2023 tampered with the status quo of the Masindi District Service Commission, amended the order paper of the district council sitting of the 27th day of July, 2023 and moved a motion under Minute 148/07/2023/COU/MDLG in which they suspended the operations of
 - 30 Masindi DSC.
 - e) That in the same vein the respondents maliciously moved a motion under minute 149/07/2023/COU/MDLG to transfer the Chief Administrative Officer, Masindi District Local Government.
 - f) That the same motion was illegally, unprecedurally and in contravention of the
 - 35 interim order of court sneaked on the order paper contrary to Section 54 of the Local Government Act Cap 243.

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- g) That the suspension of the Masindi District Service Commission was ill-motivated, illegal, ultra vires the authority of the District Council and based on the report of the District Service Commission Chairperson a one Benjamin Byaruhanga who was conflicted on account of his personal interest in the position of the Principal Community Development Officer in favour of Busingye Vincent and Principal Assistant Chief Administrative Officer in favor of Kisembo Fred.
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- h) That the unconstitutional, illegal and contemptuous conduct of the respondents to suspend the operations of the District Service Commission caused a crisis, stalled recruitment in critical education and health sectors which gravely impact on service delivery.
- i) That the District Service Commission is no longer operational and the district can no longer recruit civil servants or take decisions related to public service operations which has hampered service delivery in the district.
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- j) That justice of the matter requires strict compliance to court orders and enjoins this court to frown upon any form of conduct contemptuous of court.
- k) That the conduct of the respondents has no legal justification and enjoins this court to frown upon any form of conduct contemptuous of court.

20 In response to the application Sanyu Phionah the Chief Administrative officer and the technical advisor of the 1st respondent deponed an affidavit on behalf of the 1st respondent as thus;

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- 1) That the 2nd respondent is the Council Speaker while the 3rd - 5th respondents are councilors to the District Council.
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- 2) That she was aware of the Interim Order dated 26th July 2023 which was served on the respondents through the District Registry on the 26th July 2023 maintaining the status quo of the applicants as members of the DSC and protected their tenure from disbandment from office.
- 3) That she had seen minutes of the impugned council sitting dated 26th July 2023 which acknowledged the existence of the Order issued vide Masindi High Court Miscellaneous Application No. 0040 of 2023 under Minute 5.
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- 4) That she had seen minutes of the council sitting of 27th July, 2023 which suspended the sitting of DSC apart from the Chairperson who was to remain in office which had the effect of interfering with the status quo and tenure of applicants as DSC members as directed by the court.
- 5) That it is untenable to suspend the DSC in law which is an established statutory body.

- 6) That the first respondent has not defied the clear order of court and should not be held in contempt of court.
- 7) That the 1st respondent should not be condemned to costs.

5 The 2nd - 5th respondents also opposed the application jointly through an affidavit sworn by Kirya Moses the 2nd respondent on his behalf and on behalf of the other respondents as thus;

- 10 1) That the application is frivolous, unmeritorious, a waste of court's time, an abuse of court process and ought to be dismissed with costs.
- 2) That the applicant's affidavit in support of the application is incurably defective for want of authority and on account of being riddled with numerous falsehoods and deliberate misleading averments.
- 15 3) That the affidavit in support of the application is defective for want of authority and on account of being riddled with numerous falsehoods and deliberately misleading averments.
- 4) That the respondent is the District Council Speaker while the 3rd - 5th respondents are councilors in the service of the 1st respondent.
- 20 5) That the council sitting of the 27th day of July, 2023 was attended by 38 council members including the respondents.
- 6) That the 2nd - 5th respondents did not move any motion or pass any resolution to disband the Masindi District Service Commission.
- 7) That it is not true the 2nd - 5th respondents defied or acted in contempt of the Interim Order dated 26th July, 2023 which specifically prohibited moving of a motion to disband the District Service Commission.
- 25 8) That the said council sitting only discussed the report of the District Chairperson and made no resolution to disband the District Service Commission.
- 9) That the unsigned and unapproved extract of the alleged council resolutions relied upon by the applicants cannot be a reflection of what transpired in the council meeting of the 27th July, 2023.
- 30 10) That the district council is a body corporate and therefore likened to a company thus can be sued on its own.
- 11) That no civil proceeding can be instituted against council members by reason of what they discussed during the council meetings.

12) That the current application cannot be sustained against the 2nd -5th respondents in their individual capacities for acts done in official capacities since they are merely agents of the Masindi District Local Government.

5 The applicants responded to the affidavit in reply where the contents of the affidavit in reply were more emphasized. As such I will not reproduce the same here but will often refer to them where need be.

Representation

10 The Applicants were represented by Mr. Simon Kasangaki and the respondents were represented by Mr. Ronald Murungi. The parties were directed by court to file written submission which they complied with.

Issues for determination;

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1. *Whether the respondents acted in contempt of court orders in Miscellaneous Application No. 0040 of 2023?*
 2. *Whether the contemptuous minutes of the council sitting for the 27th day of July 2023 can be quashed and set aside?*
 3. *What remedies are available to the parties?*

20 Court's Analysis and Resolution

I have considered the arguments of both parties in the written submissions which I will not reproduce here, the affidavit in support of the application, affidavits in reply and affidavit in rejoinder. The 2nd - 5th respondents in their affidavit in reply and submissions brought forward a number of preliminary objections which I will first resolve before delving into the merits of this application. The preliminary objections are;

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- a) Counsel argued that this application is premature as it is based on a draft unsigned and unapproved extract of alleged District Council Resolutions and Minutes to support his argument. Counsel cited a number of cases and cautioned this honorable court against relying on the same as evidence to find the respondents in contempt.
- 30 b) Secondly, that this application was brought against the wrong parties. Here counsel submitted that the 2nd – 5th respondents are insulated from suits filed against them for acts done officially by Section 173 of the Local Government Act. Counsel argued that the 2nd - 5th respondents are some of the agents of the 1st respondent who is party to the suit and them being added as parties was therefore not necessary and should be

struck out with costs. Counsel while citing Section 6 of the Local Government Act submitted that the 1st respondent is a body corporate that can be sued on its own.

c) That several annexures attached to the application are not marked and serialized as required by the Commissioner for Oaths Rules.

5 d) Affidavit in rejoinder was filed without leave of court and offends Order 52 rule 3 of the Civil Procedure Rules.

e) That both affidavits in support and in rejoinder were sworn without authority of the deponents on whose behalf it was made.

10 I have carefully read all arguments of counsel for the 2nd - 5th respondents' submission as regards the preliminary objections. Counsel for the applicants only replied to three of them that were raised in the affidavit in reply however he didn't file a rejoinder to address more of the objections as elaborated upon in the 2nd - 5th respondent's submissions in reply. I will nevertheless proceed to give my analysis based on the available evidence and submissions.

15 In the case of *Mukisa Biscuits Manufacturing Co. Ltd. versus West End Distributors Ltd (1969) EA 696* a preliminary objection was defined to the effect that;-

"A preliminary objection consists of an error on the face of the pleadings which rise by clear implication out of the pleadings and which, if argued as a preliminary objection may dispose of the suit".

20 Circumstantially once a preliminary objection is raised the whole suit might be disposed of without even delving into its merits.

25 As regards the last objection that is to say; *the affidavits of the applicant were sworn without authority from the other applicants*, I find this a false hood and a trick of counsel to blind court's eyes. On perusal of both the affidavit in reply and that in rejoinder *annexture A* to each of them is a letter of authorization as such I find that counsel was proceeding under a mistaken fact and as such this preliminary objection cannot stand.

With regard to the objection by the applicants that the respondents sued the wrong parties. Counsel for the 2nd - 5th respondent urged that;

1) That the 2nd - 5th respondents were wrongly sued in their individual capacities as they enjoy the immunity under Section 173 of the Local Government Act.

30 2) That it is only a few members who were sued and not all the 38 present members who attended the council sitting.

According to the 1st respondent's affidavit in reply she acknowledges that the Court Order vide *Miscellaneous Application No. 0040 of 2023* was served on the district registry thus all councilors got to know about it inclusive of the 2nd - 5th respondents. That they were aware of the same and were present at court when it was given by court. Furthermore, Counsel for the
5 2nd - 5th respondent urges that since the 1st respondent had been sued then the 2nd -5th respondents had to be left out since they are protected by the Local Government Act.

According to the minutes the council meeting on the 27th day of July 2023 the meeting was attended by 38 members however because of some differences in the motion to discuss the report of the chairperson some of the members left the council sitting thus reducing the
10 numbers.

I agree with the submissions of counsel for the applicants in this regard that the local government is a body corporate that can be sued in its own capacity. I also agree with the submissions of counsel for the 2nd - 5th respondents that his clients have immunity under the *Local Government Act*. However, this immunity is not absolute, the immunity can only be
15 invoked if the respondents were working in good faith. The council members got notice of the court order and its contents but decided to change heading of the motion well aware that the resolutions to be made in regard to the chairperson's report would still be contention of the Court Order.

For one to be in contempt of a court order they need not do a lot. Even the slightest act in the
20 direction of opposing the court order amounts to contempt. As such I find that actions of the 2nd respondent being the speaker of the council were not in good faith as such he and others were rightly sued in their individual capacities. This objection is therefore over ruled.

Although brought under different rules of procedure, the aim of preliminary objections is the same as such I will handle the rest of the objections together.

25 **Article 126 (2) (e) of the 1995 Constitution of the Republic of Uganda** provides that;

In adjudicating cases of both civil and criminal nature, the courts shall, subject to the law, apply the following principles-

f) Substantive Justice shall be administered without undue regard to technicalities.

The supreme court in the case of *Utex Industries vs Attorney General* emphasized that
30 **Article 126 (2) (e)** was not intended to wipe out the rules of procedure. Furthermore, that the Article reflects the saying that rules of procedure are handmaids to justice and should be applied with due regard to each case.

In the case of *Col. Dr. Kiiza Besigye vs Museveni Yoweri Kaguta and Electrol Commission; Odoki C.J.* while dealing with the objections that were raised against the affidavits supporting the petition stated that;

5 *“There is a general trend towards taking a liberal approach in dealing with defective affidavits. This is in line with the constitutional directive enacted in Article 126 of the constitution that the courts should administer substantive justice without undue regard to technicalities”.*

In the case of *Najjuma and 5 Others v Joloba and Another; Miscellaneous Application No. 0770 of 2019*, court held that;

10 *“While the procedures stipulated under the law are to ensure speedy and effective dispensation of justice, the framers of the 1995 Constitution of the Republic of Uganda placed a burden on the courts to ensure that people should not be denied justice because of failure to strictly adhere to a technicality of law especially if court’s honour is not in danger”.*

Relying on the above authorities I am inclined to believe the fact that in the circumstances before this court, the honour of court isn’t in any danger. In any case disposing off this matter on a preliminary objection will lead to injustice as the merits of the application concern contempt of court orders. Therefore the preliminary objection as brought by counsel cannot stand as they are mere technicalities that cannot be used to deny justice.

15 Furthermore, in the case of *Grace Namulondo & 3 Others v Jone Johns Serwanga Salongo, Senyonga Patrick and the Commissioner for Land Registration; Misc. Cause No. 001 of 2019*, court observed as follows;

20 *“Our laws of procedure are based on the principle that as far as possible, no proceedings in court of law should be allowed to be defeated on mere technicalities .The provisions of the Civil Procedure Rules must be interpreted in a manner so as to subserve and advance the course of justice rather than defeat it.....Every omission or mistake in practice or procedure is henceforth to be regarded as an irregularity which court can and should rectify as long as it can do so without injustice and is not an abuse of court process.”*

25 On the above premises therefore, it would be absurd to declare this application incompetent before this court only by the reason of preliminary objections brought forward by counsel without going into its merit. As such the preliminary objections by Counsel for the respondents cannot be sustained.

In the case of *Florence Dawuru Vs Angumale and Another*; HCMA 0096, Hon. Justice Steven Mubiru observed that contempt of court is;

5 *“Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for protection of the public interest in the proper administration of justice, for as lord Atkin observed in Andre Paul Terence Ambard, Appeal No.46 of 1935 v The Attorney General of Trinidad and Tobago (Trinidad and Tobago [1936]1All ER, [1936] AC 322”.*

10 Counsel for the applicants came up with three issues to be resolved to wit;

1. *Whether the respondents acted in contempt of court orders in Miscellaneous Application No. 0040 of 2023.*
2. *Whether the contemptuous Minutes of the council sitting on the 27th day of July 2023 can be quashed and set aside.*
- 15 3. *What remedies are available to the parties.*

Issues one and two will be handled together.

The principles for an action of contempt of court orders were laid down in the case of *Brenda Nambi vs Raymond Lwanga*; HCMA No. 0213 of 2017 as thus;

- a) Existence of a lawful order.
- 20 b) Potential contemnor ‘s knowledge of the order.
- c) Potential contemnor’s knowledge to comply.

I am in agreement with the above principles and I will use the same in their order to make my finding.

Existence of a lawful order and potential contemnor’s knowledge of order.

25 Lord Chancellor Cotternham in the case of *Chuck Vs Cremer (1846)1CooptempCott338; 47 ER884 342-343* stated that;

30 *“A party who knows of an order, whether null or 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 or void, whether it was regular or irregular. That they should come to the court and not take upon themselves*

to determine such questions. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it might be discharged as long as it existed it must not be disobeyed."

5 From the submission of both parties and court record it is evident and not doubted the existence of court orders issued in regard to Miscellaneous Application No. 0040 2023. Furthermore, the orders were issued by court in the presence of both parties and their advocates. It is my finding therefore that there is a Court Order and that the 1st respondent's agents being the potential contemnors were aware of its existence and contents.

10 I will now proceed to the last principle of the potential Contemnor's failure to comply, that is disobedience of the order.

15 Counsel for the 2nd -5th respondents urges that no motion was moved by the 2nd – 5th respondents or even any member of the council but instead they moved a motion to discuss the report of the district chairperson. This alone is enough to find the respondents guilty of contempt. The said report discusses matters of the District Service Commission and has a number of resolutions among which included the council disbanding the applicants as members of the commission. As such the council members, the 2nd -5th respondents inclusive ought to have suspended discussion of the same in respect for an existing Court Order if they were acting in good faith per say.

20 For one to be in contempt in this scenario they did not need to directly mention that they are moving a motion to make a resolution to stop the applicants from work, however, any motion moved that would bring about the same results amounted to contempt and the council members ought not to have removed the same from their order paper without a slightest debate about the same. From the submissions of both counsel the council meeting chaired by the speaker who is the 2nd respondent got an opportunity to discuss the report well aware of its contents and the presence of the Court Order. How the same came to be on the order paper notwithstanding, the respondents cannot plead that this was done in good faith as such cannot use the immunity under Section 173 of the Local Government Act.

25 This court in various cases has held that it cannot sanction an illegality *See; Makula international Vs His Eminence Cardinal Nsubuga & Another (Civil Appeal No. 004 of 1981 [1982] UGSC 2(8 April 1982)*. In any case it will be unfair if this court does not look into the results of the meeting that was held by the council on the 27th day of July, 2023. According to the record the council members held a meeting that was commenced with 38 members and

concluded with about 21 members some having abandoned the meeting in due course but some resolutions were made.

5 The respondents in their submissions asked court not to rely on the same since they were not yet approved and signed. However, since I have already declared that the whole meeting was not held in good faith and that the members of the council who attended and passed the resolution did that outside the scope of duty ethics then the minutes and resolutions cannot stand since they were procured illegally in contempt of a Court Order. The minutes of the council meeting held on the 27th July 2023 are therefore expunged.

10 In the instant case therefore, it is my finding that the respondents are liable for the contemptuous actions of the court order. Issues one and two are held in the affirmative.

Issue No.3

What remedies are available to the parties?

The applicants prayed for the following reliefs;

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- a) A warrant of arrest be issued against the 2nd - 5th respondents committing them to civil prison for disobedience of lawful orders.
 - b) General damages.
 - c) Costs of the application be provided for.

In *Attorney General versus Male Mabirizi Kiwanuka HCMA; NO. 0843 OF 2021* Hon Justice Ssekaana Musa observed that;

20 *“The law for contempt, with power of imposing punishment, ensures respect for the courts in the eyes of the public by guaranteeing sanction against conduct which might assail the honour of courts. Indeed, the courts must be able to discharge their functions without fear or favor. However, any insinuation to undermine the dignity of the court under the garb of mere criticism is liable to be punished.”*

25 **General damages**

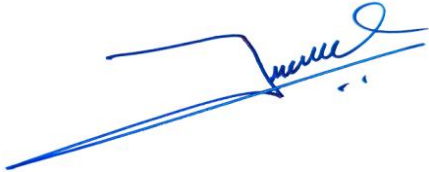
I agree with the authorities of both Counsel in regard to award of general damages. However, the amount asked for is very exorbitant. I award the applicants general damages of UGX 6,000,000 (Uganda Shillings Six Million) against 2nd -5th respondents.

Costs

It is a known principle that costs follow the event. As such costs are awarded to the applicants against the 2nd – 5th respondents.

I so Order.

5 **Dated and Delivered electronically via email this 2nd day of February 2024.**

A handwritten signature in blue ink, appearing to read 'Isah Serunkuma', written over a horizontal line.

**Isah Serunkuma
JUDGE**