

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISC. APPLICATION NO.HCT-00-LD-MA-0965-2024
(ARISING OUT OF MISC. APPLICATION NO.1052 OF 2018 & MISC.
APPLICATION NO.193 OF 2015)
(ALL ARISING FROM HIGH COURT CIVIL APPEAL NO.118 OF 2011)

PAUL SENTAMBULE:.....: APPLICANT

VERSUS

JANE MUSOKE:.....: RESPONDENT

BEFORE: HON. JUSTICE BERNARD NAMANYA

RULING

1. In this application, the applicant, Mr. Paul Sentambule, seeks an order reviewing the Ruling of the court in Miscellaneous Application No.1052 of 2018, in which Justice Nyanzi Yasin, found him to be in contempt of court, and held as follows:

“This application succeeds in the following terms;

(i) It is declared that the respondent’s actions are in contempt of the court order, issued vide High Court Misc. Application No. [193] of 2015, dated 21st April 2016.

(ii) The sum of shs. 15,000,000/= is awarded against the respondent [Paul Sentambule] as a penalty for contempt of court orders in Misc. Application No. [193] of 2015. The sum is to be deposited in court within 21 days from the date of this ruling OR that the respondent be imprisoned for 6 months.

(iii) In order to avoid disorder on ground, this court has limited the existence of the stay of execution to 6 months only to allow the



prosecution of the appeal OR failure of which the order shall be vacated for being an abuse of court process having been in place for 8 years now.

(iv) Costs are awarded to the applicant.”

2. The matter came up for hearing on the 29 April 2024, and counsel for the respondent raised a preliminary objection thus: that a party in contempt of a court order cannot be heard by court unless, and until he purges himself of the contempt.
3. It is the respondent’s case that, whereas the applicant (Paul Sentambule) was found in contempt of court in Misc. Application No.1052 of 2018, he has neither paid UGX 15,000,000 that he was ordered to pay as the penalty for contempt nor ceased to undertake activities on the suit land that resulted in contempt of court proceedings. In an affidavit in reply deponed on the 24 April 2024, the respondent stated thus:

“1. That the applicant is in further contempt of the court order by omitting to deposit the fine of UGX 15,000,000/= and continuing to perform the contemptuous acts contained in ruling of MA 1052 of 2018.

2. That when this Hon. Court visited locus on the 15th March 2024, the said billboard business was still being carried out on the suit land.

3. That the applicant had started another new business of modern stone sharpening on a large scale.

4. That...a contemnor cannot seek the aid of court while still in contempt.”



4. The applicant deponed two affidavits on the 17 April 2024 and on the 2 May 2024, stating that he was erroneously found in contempt of court because among other reasons, the house on the suit land, was constructed by a one Moses Ssali, and not him, and that he accordingly seeks to review the orders of the court finding him in contempt of court.
5. In the case of *Jingo Mukasa v. Rwaguma (Civil Appeal No. 190 of 2015) [2021] UGCA 51*, the High Court (Bashaija, J) found that Ms. Rwaguma was the lawful owner of land having acquired it by adverse possession and bona fide occupancy. Mr. Jingo Mukasa lodged an appeal in the Court of Appeal but while the appeal was pending hearing, he sold part of the land to third parties. When the appeal came up for hearing, it was argued on behalf of Ms. Rwaguma that Mr. Jingo Mukasa could not be heard on appeal because he was in contempt of court for amongst others, selling off part of the suit land which was subject of appeal, in contempt of the orders of the High Court. The Court of Appeal ruled that Mr. Jingo Mukasa could not be heard on appeal because he guilty of contempt of court. The learned Justices of Appeal (Hon. Justice Geoffrey Kiryabwire, Hon. Lady Justice Monica K. Mugenyi, and Hon. Justice Remmy Kasule) held as follows:

“On our part, we find no difficulty in reconciling the divergent positions in...Hadkinson v. Hadkinson [1952] 2 ALL ER 567. It is indeed in the public interest and in furtherance of public policy as encapsulated in Uganda’s national laws and international obligations that the judiciary would embrace the responsibility articulated in R v. Horsefery Road Magistrates Ex Parte Bennet [1994] 1 AC 42 to refuse to countenance behaviour that threatens the rule of law. These are indeed grave considerations that, in the

A handwritten signature in black ink, appearing to read 'Bemba Hancey'.

absence of other effective means of securing the contemnor's compliance, would warrant the refusal by a court to hear a party in such civil contempt as impedes the course of justice unless and until such party has purged himself or herself of the contempt. The contemptuous acts in issue in the instant case are an undisputable affront to the rule of law and due process that the Court cannot ignore. They typify and bring into purview the equitable maxim that "he who comes to equity must come with clean hands". The obviation of the Appellant's right of appeal would ordinarily be the court's sanction of last resort, primary recourse being made to such other coercive sanctions as would engender compliance with the flouted orders. However, there are scarcely any other feasible options at the Court's disposal, the Appellant having sub-divided and transferred part of the suit property to a third party that has since been registered as the proprietor thereof. Consequently, the subject matter of this Appeal having been removed from the Court's purview at the instance of the Appellant and in blatant violation of the trial court's orders, we would defer to the compelling reasoning of the US Supreme Court in National Union of Marine Cooks & Stewards v. Arnold 348 U.S. 37 (1954). It would be antithetical to the rule of law and an endorsement of the flagrant abuse of court process were this Court to entertain an Appeal by an Appellant that has been adjudged for disobedience of lawful court orders that are the subject of appeal. We find the court left with but one course of action to salvage the sanctity of the judicial process, that is, to dismiss the Appeal filed by the contemnor. In the result, this Appeal is hereby dismissed with costs to the Respondent"



6. On the basis of the above Ruling of the Court of Appeal of Uganda, which is binding on this court, it is my decision that the applicant, Mr. Paul Sentambule cannot be heard by this court because he was found guilty of contempt of court in Misc. Application No.1052 of 2018, and has not purged himself of the contempt, and is in fact, continuing to violate and abuse the orders of this court thereby obstructing the course of justice.

7. The preliminary objection raised by counsel for the respondent is upheld, and this would be sufficient to dispose of the application, but I will briefly comment on the merits of the application for review of the Ruling of the court in Misc. Application No.1052 of 2018.

8. The law governing review of judgments or rulings is well settled. In order for an applicant to succeed, they ought to first show that either: i) there is a mistake or error apparent on the face of the record; or ii) that there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed; or iii) that any other sufficient reason exists. See the case of ***FX Mubukuke v. UEB, High Court Miscellaneous Application No. 98 of 2005; Section 82 of the Civil Procedure Act (Cap 71); and Order 46 rule 1 of the Civil Procedure Rules (S.I 71-1).***

9. I have carefully considered the evidence brought by the applicant, and it is my conclusion that he failed to prove that there is a mistake or error apparent on the face of the record; or ii) that there is discovery of new and important evidence that was brought to the court at the time that the Ruling was made.



10. As matter of fact, this court conducted a locus in quo visit to the suit land on the 15 March 2024 located along Kira – Kasangati Road in Kira Town Council, Wakiso District. This was part of the process of hearing Misc. Application No.2578 of 2023: Ssali Moses v. Jane Musoke & Paul Sentambule. The court observed that the applicant still carries out the business of stone slating and pipe fabrication. These are the very activities for which the court found him to have violated the order of stay of execution, that limited use of the suit land to only farming and residential activity; and declared him to be in contempt of court.
11. Overall, it is my conclusion that there is no reason to review the Ruling of this court in Misc. Application No.1052 of 2018.
12. In the premises, this application is dismissed and the applicant, Mr. Paul Sentambule is ordered to pay the costs of the application.

IT IS SO ORDERED.



BERNARD NAMANYA

JUDGE

7 May 2024

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