

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION No. 714 OF 2022

(Arising from Civil Application No. 555 of 2022)

(Arising from Civil Application No. 554 of 2022)

(Arising from Civil Appeal No. 343 of 2021)

(Arising from Civil Appeal No. 16 of 2020)

(Arising from Civil Appeal No 5 of 2005)

NASSANGA JANE:..... APPLICANT

VERSUS

1. RWAMUTEMBANI DESIRE

2. RUTARO APPOLLO :..... RESPONDENTS

**CORAM: HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE,
J.A.**

RULING

INTRODUCTION.

This is an Application brought under Rules 32(1),42(1)(2),43 and 44 of the Judicature (Court of Appeal Rules) Directions (hereinafter referred to as the “Rules of this Court”).

The Application seeks Orders that: -

- a) The Respondents be committed to civil Prison for contempt of a court order dated the 26th of August 2022 issued by this court Vide Civil Application No. 555 of 2022.
- b) That the Respondents be ordered to pay a fine for contempt of court.
- c) That the Respondents pay compensation to the Applicants.
- d) That the Respondents show cause why they should not be arrested and committed to civil prison.
- e) That the costs of the Application be provided for.

The Application is supported by the affidavit of Ms. Nassanga Jane, the Applicant which briefly states that;

- 1) That the Respondents filed Civil Application No. 555 of 2022 against the Applicant on the 18th day of May 2022 for an interim stay of execution against the Applicant.
- 2) That the Application was granted to preserve the status quo pending hearing of the Appeal.
- 3) That the Respondents have defied the said court order by reconstructing unipots on the suit land.
- 4) That in total disregard of the court order, the Respondents with the assistance of the security provided by the chief Administrative Officer (CAO) of Kabale District have continued to set unipots and re-occupy the suit land.
- 5) That it is the Applicant 's prayer that the Respondents are found in contempt of a court order preserving the status quo thereon.
- 6) That it is just and equitable that the orders sought be granted.

In Reply, the Respondents filed an affidavit sworn by Rutaro Appolo the second Respondent which briefly states that;

1. The Respondents partially agree and add that out of the 12 unipots that were initially in the survey camp, before the unlawful demolition by the Applicant and her agents,⁶ have been erected for shelter and to safeguard the properties of the Respondents that were being stolen and also damaged due to exposure to harsh weather conditions.
2. That the Respondents had lived on and derived sustenance from that land for more than forty years having been given the same by the government of Uganda, and have been in continuous possession of the same.

BRIEF FACTUAL BACKGROUND.

The Respondent filed civil Application No.555 of 2022 against the Applicant on 18th May 2002 before this Court. On 26th August 2022 a Ruling in civil Application No 555 of 2022 arising from civil Appeal No. 554 was delivered preserving the status quo of the suit land pending disposal of Civil Appeal No.343. That in total disregard of the said order, the Respondents are reconstructing unipots on the suit land with the assistance of security Personnel provided by the Chief Administrative Officer of Kabale district.

REPRESENTATION

The Applicant was represented by Ms. Kemigisha Ssebunya while Ms. Atukunda Judith appeared for the Respondents.

APPLICANT'S SUBMISSIONS

The Applicant did not file submissions.

RESPONDENT'S SUBMISSIONS

The Respondent also did not file written submissions.

COURT'S FINDINGS

THE PRINCIPLES

Black's Law Dictionary 7th Edition pg. 313 defines contempt of court as a disregard of or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair respect due to such a body.

According to Halsbury's Laws of England: "it is a civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act."

Contempt of court is conduct that defies the authority or dignity of court. Civil contempt arises where there is disobedience to judgment, orders or other court processes and involves private jury. It is any conduct which clauses and makes a mockery of the judicial process and which thus contends it pernicious influence beyond the parties to the actions and affects the interest of the public in the

administration of justice and court has the duty to protect and punish for contempt of its orders.

Article 128(2), (3) of the Constitution of Uganda provides thus:

1. *No person or authority shall interfere with courts or judicial officers in the exercise of their judicial functions.*
2. *All organs and agencies of the state shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts".*

In **Lukenge Hakeem v Hajati Ajiri Namagembe & others** court of Appeal Civil Application No.0290/2020 this court stated that civil contempt consists of the intentional doing of an act which is in fact prohibited by the order. The court held that 3 elements must be proved before a finding of civil contempt can be made namely;

- a. Existence of a lawful order that is clear and unambiguous.
- b. Party alleged to have breached the order must have had actual knowledge of the order.
- c. Party alleged to have breached the order must have intentionally done the act that the order prohibits and intentionally failed to do the act that the order compels.

It is the position of the law that the standard of proof in contempt proceedings must be higher than proof of probabilities and almost but not exactly beyond reasonable doubt. See **Hon. Sitenda Sebalu V Secretary General of the East African Community No.8 Of 2012**

The case of ***Hadkinson v Hadkinson [1952] All ER***, Romer L.J relied on the case of Church v Cremer (1 Coop Temp Cott 342) where it was held that "*A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it. . . as long as it existed*".

Consideration of the merit of the Application

I have read the Motion in this Application and the Affidavits for and against it.

This court granted an Order for interim Stay of Execution in Civil Application No.555 of 2022 on the 26th day of August 2022 preserving the status quo. This Application had been filed by the Respondents. They averred that the Applicant had initiated the process of execution and the Respondents were likely to be arrested and evicted from their own property.

In this Application the applicant averred that the Respondents are reconstructing unipots on the land. In their defense the Respondents averred that they had been living on the land for over forty years and had derived their sustenance from it. They also averred that the applicant and her agents were arrested for carrying out an unlawful eviction and malicious damage to property. They further averred that they did not defied the court order but merely reconstructed a few unipots /maintained a few unipots to safeguard their properties and also shelter themselves.

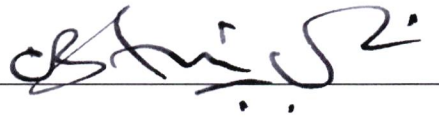
Since, the Respondents had been resident on the property for over 40 years and the order that was granted was to maintain the status quo. I find that they did not intentionally disobey lawful orders.

In the premises, it is my ruling that the application lacks merit and is hereby dismissed.

Costs abide the outcome of the Appeal.

I so Order.

Dated at Kampala this.....^{21st}..... day of.....^{March}..... 2023.



CHRISTOPHER GASHIRABAKE

JUSTICE OF APPEAL