

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

**MISC. APPLICATION NO. 0429 OF 2022
(ARISING FROM MISC. APPLICATION NO. 685 OF 2021)
(ALL ARISING FROM HCCS NO. 283 OF 2021)**

TAKAYA FRANK ::: APPLICANT

VERSUS

SAMALIYA (KIGANJA) TEA ESTATE LTD ::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Chamber Summons under Sections 98 of the Civil Procedure Act Cap 71 and Order 41 Rules 2(3) & 9 of the Civil Procedure Rules, for orders that;

- a) The Directors of the Respondent Company/Judgement Debtor be arrested and committed into civil prison for contempt of court and/or disobeying orders of the Court made on 13th July 2022.
- b) The Respondent's Directors be fined UGX 50,000,000/= as sanction for their contemptuous conduct.
- c) Costs of the application be provided for.

[2] The grounds upon which the application is based are summarized in the Chamber Summons and also set out in the affidavit sworn in support of the application by **Takaya Frank**, the Applicant. Briefly, the grounds are that the Respondent filed Civil Suit No. 283 of 2021 against the Applicant as the 1st defendant and six others challenging the purchase by the Applicant of land comprised in FRV 35 Folio 19 Plot 313 at Samaliya Kiganja. The Respondent applied for a temporary injunction order vide Misc. Application No. 685 of 2021

and an Administrative interim order vide Misc. Application No. 686 of 2021. The Administrative interim order was issued on 8th October 2021 and extended on the 11th October 2021 until 18th October 2021. A temporary injunction order was issued on 13th July 2022 with orders for maintenance of the status quo on the suit land by both parties until disposal of the main suit vide HCCS No. 283 of 2021. The Applicant stated that the Directors of the Respondent Company in contempt of the court order are selling pieces of land to various purchasers out of the suit land and bringing materials to construct houses thereon. He concluded that it is just and equitable that the application be granted.

[3] The Respondent opposed the application through an affidavit in reply deposed by **Nakalyango Sarah**, a Director of the Respondent who stated that the application is incompetent, frivolous and vexatious. She stated that no director has ever defied the court injunction issued by this Court as no part of the suit land has been sold to any individual. The deponent also stated that the suit land has over 1000 bibanja owners who are not under the Respondent's control and are carrying out several activities on the suit land. She stated that, rather, it is the Applicant who has caused arrests of the bibanja owners and used the police and RDC to stop them from paying Busulu to the Respondent. She also stated that it is the Applicant who is in contempt of court and that it is in the interest of justice that the application is dismissed with costs; and instead, the Applicant be found to be in contempt of the court.

Representation and Hearing

[4] At the hearing, the Applicant was represented by **Mr. Babumba John Kennedy** while the Respondent was represented by **Mr. Mubiru Shafik**. The parties agreed that the hearing proceeds by way of written submissions which were duly filed by Counsel and have been taken into consideration in the course of determination of this matter.

Issues for Determination by Court

[5] Two issues are up for determination by the Court, namely;

- a) Whether the Respondent's Directors are in contempt of court?**
- b) What remedies are available to the parties?**

Resolution by the Court

Issue 1: Whether the Respondent's Directors are in contempt of court?

Submissions by Counsel for the Applicant

[6] Counsel for the Applicant cited the cases of *Megha Industries v Comform (u) Ltd HCCM No. 21 of 2014*; *Hon. Sitenda Ssebalu v Sec. General of East African Community Ref. No.8 of 2012*; *Stanbic Bank (U) Ltd & Anor v Commissioner General URA MA No. 213 of 17* and *Hadkinson v Hadkinson [1952] ALLER* for the position of the law on contempt of court. Counsel submitted that the Respondent's directors, in particular Ms. Nakalyango Sarah, have been selling pieces of land out of the suit land to various purchasers who are ferrying building materials and carrying out construction on the suit land. Counsel submitted that the Respondent's directors had knowledge of the lawful order of a temporary injunction to maintain the status quo until disposal of the main suit as the same was issued in presence of the Respondent's counsel and knowledge of the same was not denied by the Respondent's director in her affidavit in reply. Counsel prayed to Court to find that the Respondent's directors have acted in contempt of the court order.

Submissions by Counsel for the Respondent

[7] In reply, Counsel for the Respondent agreed with the position of the law on contempt of court as laid out in the authorities cited by the Applicant's

Counsel. Counsel disputed the Applicant's claim that the Respondent's directors are in defiance of the court order and argued that the application was brought in bad faith to frustrate the Respondent financially. Counsel further submitted that from the reading of the order, it is the Applicant who has interfered with the Respondent's possession of the suit land. Counsel also submitted that the receipt issued in 2021 that was attached by the Applicant as proof of defiance of the court order was in respect of sale of mortars which belonged to the Respondent. Counsel concluded that the Applicant has not adduced evidence of contempt of court on the part of any of the directors besides simply pointing out Nakalyango Sarah. Counsel prayed that the Court finds that the Respondent or its directors are not in contempt of court.

Determination by the Court

[8] Contempt of court is defined as an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it". See Principles of Criminal Law 1st ed. (***Juta, Cape Town 1991***) at 627; ***R v Almon (1765) 97 ER 94 at 100; Ahnee and Others v. Director of Public Prosecutions [1999] 2 WLR 1305 (PC) and R v Metropolitan Police Commissioner, Ex parte Blackburn (No 2) [1968] 2 All ER 319 (CA).***

[9] Under the law, the recognition given to contempt is not to protect the tender and hurt feelings of the judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed. Conduct is calculated to prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that prejudice will result. Contempt of court may thus take many forms; it may be committed by the person's action or inaction. Among other forms, contempt of court occurs when an individual intentionally and demonstrably disobeys a court order. To

constitute contempt of this nature, the act or omission which contravenes the court order must have been intentional but not necessarily deliberately contumacious (willfully disobedient or deliberately defiant). It is well established that it is no answer to say that the act was not contumacious in the sense that, in doing it, there was not direct intention to disobey the order. The requirement of intention excludes only casual or accidental acts. See: ***Angelina Lamunu Langoya vs Olweny George William HCC Misc. Application No. 30 of 2019 (Gulu High Court)***.

[10] In that regard, therefore, the conditions which must be proved by an applicant in contempt of court proceedings are as follows:

- a) The existence of a lawful court order.
- b) The potential contemnor's knowledge of the court order.
- c) The potential contemnor's failure or refusal to comply with the order or disobedience of the order.

(See: ***Hon. Sitenda Sebalu versus Secretary General of East African Community Ref. No. 8 of 2012; Dr. Charles Twesigye vs Kyambogo University HC Misc. Application No. 120 of 2017 and Angelina Lamunu Langoya vs Olweny George William HCC Misc. Application No. 30 of 2019***).

[11] On the case before me, it is not in dispute that an order of a temporary injunction was issued on 13th July 2022 vide HCMA No. 685 of 2021. Existence of a lawful court order was, therefore, not in contention. It is also not disputed that the Respondent through its directors had actual knowledge of existence of the said order. The question that this Court has to investigate is whether the Respondent's directors disobeyed the said court order. The acts alleged to constitute particulars of disobedience are that the Respondent's directors have been selling off pieces of land to various purchasers who are ferrying building materials and carrying out construction on the suit land. The Applicant

attached different photographs taken on different dates as evidence of ongoing construction on the suit land and attached a receipt of sale of mortars dated August 2021. Although the photographs contain dates on which they are said to have been taken, it is difficult to establish who exactly was undertaking construction activities. This is especially so given the allegation by the Respondent's director that the suit land comprises of over 1000 bibanja holders who carry out various activities beyond the Respondent's control. Unless the claim of existence of the numerous bibanja holders is discounted through evidence, the Court cannot be in position to sanction the Respondent or its directors for any construction activities on the suit land. It is also important to note that in case of existence of any bibanja holders on the suit land, they are not before the court and they are, therefore, not subject of the order of temporary injunction issued by the Court.

[12] Furthermore, the claim of sale of parts of the suit land has not been verified through any evidence. No agreements of sale have been adduced by the Applicant. The Court cannot be asked to assume that any sale took place. The receipt of sale of a mortar in August 2021 is irrelevant. The order herein in issue was not in existence then and secondly, and more important, sale of a mortar cannot be evidence of sale of land. There is no allegation, let alone proof, that the said mortar belonged to the Applicant; and if so, how it is relevant to the order of injunction.

[13] In the circumstances, therefore, the Applicant has adduced no evidence to establish any of the particulars of disobedience of the court order. The Applicant has not established the third element necessary to reach a finding of contempt of court. Similarly, the claim by the Respondent that the Applicant was instead in contempt of the court is not made out. Making complaints to police and initiating criminal prosecution is a lawful process that cannot

amount to contempt of the court. In case the Applicant does so maliciously, then the remedy does not lay in an action for contempt but rather in tort.

[14] In all, therefore, the claims for contempt of the court order fail. The application is accordingly dismissed. However, before taking leave of this matter, it is apparent to me that there is unrest on the land in issue while this litigation is on-going. I urge parties to desist from any underhand means that may have the effect of undermining the authority of the court. Although no particulars of disobedience have been established on evidence, the accusations and counter accusations point to something boiling up on the suit land. The parties are directed to concentrate on facilitating expeditious disposal of the main suit rather than indulging in illegal or criminal activities intended at taking unfair advantage. Needless to say, any activities done by any person while this dispute is being adjudicated is capable of being nullified by any findings and orders the Court may make upon disposal of the main suit. Finally, for these reasons, I will order that the costs of this proceeding shall be in the cause.

It is so ordered.

Dated, signed and delivered by email this 2nd day of May, 2023.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala
JUDGE