

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)**

MISCELLEANOUS APPLICATION NO. 1625 OF 2016

**(ARISING OUT OF EMA NO. 2929 OF 2015)
(ALL ARISING FROM CIVIL SUIT NO. 008 OF 2012)**

**1) SEMANDA DAVID
2) FRED MAWAGI
3) ISAAC KITIMBO APPLICANTS**

VERSUS

**1) NO. K 2011 KAHEEBWA GEOFREY
2) NO. A 1207 AYEBALE BENON RESPONDENTS**

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This application was made under S.98 C.P.A, S.33 Judicature Act, and 0.52 r1 and 3 C.P.R. It seeks orders of this court:-

- 1) Declaring that the Respondents were in contempt of court when they prevented the Applicants from completing execution.
- 2) An order committing the Respondents to civil prison for disobedience of lawful orders and contempt of court.
- 3) Directing the Respondents to pay exemplary/ punitive damages to the Applicants.
- 4) Directing the Respondents to pay a fine for contempt of court order.
- 5) Payment of costs of the application and payment of the execution costs of the Bailiff.

The grounds for the application are set out in the motion, which is supported by the affidavit of the First Applicant. There is also a supplementary affidavit.

The application was filed on 26.07.16.

5 The motion was served on the Respondents by an affidavit dated 30.08.16. However, the affidavit although filed was never signed by the Deponent. The Respondents did not appear in court 30.08.16.

10 It was accordingly directed that fresh hearing notice issue and the Respondents served again to appear in court on 10.10.16.

15 On 10.10.16, the Respondents did not appear in court. There being an affidavit of service filed on 07.10.16, indicating that the Respondents were served in person and also through their bosses; and there being no reasons advanced for the absence of the Respondents, court allowed the application to proceed exparte. This is no affidavit in reply.

20 Counsel for the Applicants then went through the provisions under which the application was made, together with the orders sought. He referred court to paragraphs 2 – 12 of the supporting affidavit.

25 It was then submitted that, the law governing applications of this nature sets out three elements to be proved:-

- 1) There was a court order.
- 2) The Respondents were aware of the order.
- 3) They chose to disobey the order.

30 The case of **Mega Industries vs. Conform Ug Ltd Miscellenous Cause 21/14** was relied upon to support the submissions.

Counsel contended that the supporting affidavits in the present case indicate that all the three elements were proved. There was a court order issued by the Registrar on 08.07.16, and the Applicants were authorized to execute it.

35 The warrant was cleared by police as required by practice. The District Police Commander and other Police Officers were at the scene of execution and therefore that the orders were known to the Respondents.

40 The court order was shown to the Respondents but it was ignored and all Police Officers at the scene together with the Applicants were arrested by the Respondents. Instead of the

Respondent's advising the people affected by the court order to challenge it through the right channels, they kept the Applicants in custody for five days.

5 It was the assertion of Counsel that acts of this nature are rampant and they amount to contempt of court. And that unless court sends out a strong signal that court orders ought to be obeyed, they will always be rendered nugatory. The case of **Rammicklal Papot vs. Attorney General and Others Miscellenous Application 1053/15 [2015] UGHCLP 46** was relied upon.

10 Counsel then prayed court to allow the application and issue the orders sought.

The application raises the following issues:-

- 1) **Whether the Respondents were in contempt of court.**
- 15 2) **And if so, what other remedies are available to the Applicants.**

Whether the Respondents were in contempt of court.

20 As submitted by Counsel for the Applicants and rightly so, decided cases have established principles to be proved for any action to amount to contempt of court. That is

- Existence of a lawful order.
- Knowledge of the order by the potential contemnor.
- 25 - Failure to comply, that is, disobedience of the order by the potential contemnor.
- Refer to **Megha Industries (U) Ltd vs. Conform Uganda Ltd (Supra)** where the case of **Stanbic Bank (U) Ltd & Jacobsen Power Plant vs. Uganda Revenue Authority MA 42/2016** and the case of **Hon. Sitenda Sebalu vs. Secretary General of the East African Community Reg. No. 08/2012** were relied upon.
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In the present case, it is the uncontroverted evidence of the Applicants that the First Applicant who is a Court Bailiff t/a Tuksem Associates received a warrant to give vacant possession of the suit property comprised in Busiro Block 392, Plot 70, including six other Plots. The warrant was issued by court on 08.07.16.

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The warrant was duly cleared by police and other concerned security agencies as is the current practice in execution.

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However, on the 18.07.16, when the Applicants went to execute the orders of court, the First Respondent interfered and stopped the execution contending that it was illegal and that the court order was a forgery.

5 Although the First Respondent was served with a copy of the warrant duly cleared, he arrested the Applicants and took them to Katwe Police Station, where they were detained for five days on the directives of the Second Respondent and they were eventually charged with malicious damage.

10 The Respondents had full knowledge of the existence of the court order because it had been cleared by police including the Respondent's office.

However that, they used their offices to prevent completion of the execution and directed the people who had been removed from the land to return to it.

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As already pointed out, the evidence of the Applicants was not disputed by the Respondents as they declined to answer to the summons of this court and therefore did not put in any response.

This court therefore finds that the Respondents were in contempt of court orders when they 20 interfered with the duly authorized execution and prevented its completion.

What is left for court to determine is the **other remedies available to the Applicants.**

The other remedies sought by the Applicants were:- detention of the Respondents in civil prison, 25 payment of exemplary / punitive damages, fine for contempt of court orders, payment of the execution costs of the First Applicant and costs of the application.

Courts in Uganda have derived punishments for civil contempt from common law decisions, where the punishments are provided for in the **Contempt of Court Act (1981).**

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This is because Uganda ***“has no equivalent of the Contempt of Court Act”***. However, decided cases have established that ***“disobedience of civil court orders is known and ought not to be allowed by courts.”*** - Refer to **Stanbic Bank (U) Ltd & Another vs. Commissioner General Uganda Revenue Authority Miscellenous Application 0042/2010.**

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The courts have accordingly resorted to **S.14 (20 (b)(i) of the Judicature Act** which enjoins the High Court to exercise its jurisdiction in conformity with the Common Law and Doctrines of Equity. Together with **S.14 (2) (c)** of the same Act, where court is mandated to exercise its jurisdiction in conformity with the principles of justice, equity and good conscience. – See 40 **Stanbic Bank (U) Ltd & Another vs. Commissioner General Uganda Revenue Authority (Supra).**

In the present case, court has already declared that the Respondents were in contempt of court orders when they interfered with a duly authorized execution which was being supervised by police; arrested the Applicants and kept them in detention for five days. The actions of the Respondents were highhanded and uncalled for as they could have advised the parties that were being evicted to seek appropriate court remedies, but not to direct them to return to the land as they did.

Since the Respondents were aware of the court order, they ought not to have interfered with it / disobeyed it. It is a general principle of law that ***“a party who knows of an order cannot be permitted to disobey it.... As long as the order exists, it must not be disobeyed.”***

Therefore as long as the warrant given to the First Applicant existed and had not been set aside or recalled by court, the Respondents ought to have obeyed it.

Whether the Respondents should be detained in Civil Prison.

“Civil contempt is punishable by way of committal, by a fine or an injunction against the contemnor.” Among other things. – See **Stanbic Bank case (Supra)** where **Halsburys Laws of England Volume 9 (1) paragraph 492** was cited.

In the case of **ReContempt of Dougherty 492, Michigan 81, 97 (1987)** it was held that ***“imprisonment for civil contempt is properly ordered where the Defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance was mandatory in character.”*** ***The order in such a case is not a punishment but is coercive to compel him to act in accordance with the order of court.”***

The principles of justice, equity and good conscience would require that the Respondents be committed to civil prison. But since the eviction flopped though be due to the actions of the Respondents, without another warrant for execution being issued they cannot be compelled to act in accordance thereof. The order was overtaken by events. It would be futile to commit them to civil prison, which would also be an added burden to the Applicants who would have to incur the costs of sustaining the Respondents in prison for six months.

The order of committal is therefore disallowed for those reasons.

Whether to award aggravated and exemplary damages.

Decided cases have drawn a distinction between aggravated and exemplary damages. *“Aggravated damages are by their nature intended to compensate the plaintiff (Applicant) whereas exemplary damages are, by their nature intended to punish the defendant”*. – See the case of **Ntabgoba vs. Editor in Chief of the New Vision and Another [2004] 2EA 234**,
5 **Bhadelia Habib Ltd vs. Commissioner General of Uganda Revenue Authority [1997 – 2001] UCL 2002**, **Ahmed Ibrahim Bholm vs. Care General Ltd SCCA 12/2002, A vs. B [1974] INZLR673 and 677** and **Loomis vs. Rohan (1974 46 DLR (3d) 423** cited by Hon. Justice Katureebe as he then was in his paper to the Judicial Officers dated 18.06.2008.

10 **Aggravated damages:**

The Applicants were put in prison for five days by the Respondents before being charged with malicious damage to property. The act of keeping the Applicants in detention for enforcing a lawful order of court and well beyond the permitted 48 hours was unconstitutional and it certainly inconvenienced the Applicants. I therefore find that they are entitled to aggravated
15 damages. However, no figure was proposed by Counsel for the Applicants. This court awards the Applicants a sum of Shs. 1,000,000/- each – 3,000,000/- as aggravated damages together with interest at court rate for the date of ruling until payment in full. The aggravated damages will act as compensation to the Applicants for the inconvenience suffered for their imprisonment for five (5) days.

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Exemplary damages

25 The Applicants are also entitled to exemplary damages, as the damages are meant to punish the Respondents for the blatant disobedience of the court order.

A total of Shs. 6,000,000/- is awarded as exemplary damages together with interest at the rate of 6% from the date of judgment until payment in full.

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Contempt of Court:

Counsel for the Applicant did not propose the amount of the fine to be paid by the Respondents for contempt of court. The Respondents are directed to pay Shs. 1, 000,000/- each as a fine (total Shs. 2,000,000/-). The purpose of the fine is to send a firm message to the Respondents and
35 other would be contemnors that, court orders are not issued in vain and ought to be respected and obeyed as long as they remain in force. The fine should be deposited in court.

Costs:

Costs follow the event unless for good cause court orders otherwise.

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The Respondents should therefore also meet the taxed costs incurred by the Applicants in the failed execution and also pay the costs of this application.

The application is allowed and the following orders are made:-

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1) It is hereby declared that the Respondents were jointly and severally in contempt of court when they prevented the Applicants from executing lawful orders of court.

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2) The Respondents to pay aggravated damages to the Applicants of Shs. 3,000,000/- together with interest at court rate of 6% from the date of judgment until payment in full.

3) The Respondents to pay exemplary damages of Shs. 6,000,000/- with interest at court rate from date of judgment until payment in full.

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4) The Respondents to pay Shs. 1,000,000/- each as a fine for contempt of court. Total Shs. 2,000,000/- The same to be deposited in court.

5) Taxed costs of the frustrated execution are also granted to the Applicants.

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6) Taxed costs of this application are also granted to the Applicants.

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Flavia Senoga Anglin

Judge

30 **26.10.16**