

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**(LAND DIVISION)**

**MISC. APPLICATION NO. 83 OF 2019**

*(Arising from Civil Suit No. 552 of 2018)*

**BUILDNET CONSTRUCTION**

**MATERIALS AND HARDWARE.....APPLICANT**

**VERSES**

- 1. MOSES SEWANDIGI KIKOMEKO SSEMBEREGE**
- 2. SARAH NAKANDI**
- 3. AIDA NAWANDAGI**
- 4. COMMISSIONER LAND REGISTRATION.....CLAIMANTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought by way of Notice of motion under the provisions of Section 140 of the Registration of Titles Act, Section 39 (8) of the Land Act as amended, Section 64 (c), (e) and 98 of the Civil Procedure Act, Section 33 of the judicature Act and O.52 rr 1 & 3 of the Civil Procedure Rules for the following orders;

- a) The Respondents be sanctioned for contempt of Court order and further be arrested and committed to civil prison.
- b) The Commissioner for Land Registration vacates the caveat wrongly lodged and registered on land comprised in **Kyadondo Block 214 plot 157** at Kisasi under Instrument No. 00052494 on the 27<sup>th</sup> July, 2018 by the 1<sup>st</sup> Respondent and be pleased to create and process condominium titles out of the suit land the subject of the head suit.

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

- c) Exemplary damages of shs. 300,000,000/- only (*three hundred million shillings*) be granted to the Applicant.
- d) A penalty in a sum of shs.275,000,000/- only (*two hundred seventy five million shillings*) be granted to the Applicant.
- e) Costs be provided for.

The facts from which the application emanates are contained in the grounds of the notice of motion and affidavit in support of Ibrahim Semaganda; a Director of the Applicant Company, and briefly are that;-

- i. That the Applicant is the registered proprietor/owner of land comprised in **Kyadondo Block 214 Plot 157 land at Kisasi**. *A copy certificate of title is attached as annexure 'A'.*
- ii. That the Applicant sued the 1<sup>st</sup> \_ 3<sup>rd</sup> Respondents for specific performance of a contract between themselves upon which a temporary injunction was issued as against the Respondents on the 27<sup>th</sup> July 2018, restraining them from further acts of breach of contract the subject of the head suit. *A copy of the Court order is attached as annexure 'B'.*
- iii. That the Respondents were served with the said Court order together with other Court process but still the 1<sup>st</sup> Respondent went ahead and lodged a caveat unto the Applicant's title, an act in total contempt of the said Court order.
- iv. That the Court order is still subsisting and has never been set aside.
- v. That the Respondents had the ability to comply with the said Court order which they voluntarily agreed to be bound by, having duly received the same, wrote a letter in respect of the same to the Registrar of this Court for interpretation and that a reply thereto that the words were clear and unambiguous was returned to the Respondents and that the same has not been set aside. *A copy of the reply was attached as annexure 'C'.*

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

- vi. That neither the 1<sup>st</sup> Respondent nor the others have any lawful ground for maintaining a caveat on the said title as the same would be as it is in total contempt of the Court order of this honorable Court. *A copy of the caveat and the supporting affidavit are attached as Annexure 'E'.*
  
- vii. That the 4<sup>th</sup> Respondent registered the caveat on to the Applicant's title in error and wrongfully, that the said caveator had no caveatable interests. That the 1<sup>st</sup> Respondent claimed to be a co-registered proprietor whereas not as the register at the time had since changed and reflecting the Applicant as the registered proprietor on the 27<sup>th</sup> June, 2018, a *copy of the search report was attached as annexure 'G'.*
  
- viii. That the Applicant has been greatly inconvenienced by the negligent acts of the 1<sup>st</sup> Respondent's caveat lodged illegally on the suit land and that it has been deprived of the quite enjoyment of the land as a Company. That it has failed on the process of creating condominium titles and that it is a further breach of the contract the subject of the head suit.

In opposition to this application, the 1<sup>st</sup> Respondent admitted that the Applicant instituted a suit in this Court. He however averred that the Respondents counterclaimed against the Applicant for fraud, breach of trust and for orders that the Applicant's title be cancelled and the Respondents be re-instated on the land as the registered proprietors.

It was the Respondent's case that Court granted an order on the 27<sup>th</sup> July, 2018 in their absence because they were not aware of the application. The 1<sup>st</sup> Respondent admits to have lodged a caveat as a way of protecting their property that had been fraudulently dealt with by the Applicant and its agent.

That the Applicant terminated the contract between the parties and that before a new contract would be reached between the parties, the Applicant transferred the land without their consent. Further that the activities of lodging a caveat were started before the above suit and the application for a temporary injunction were filed in this Court. It was his case that the entry of the caveat as an instrument on the title on the 27<sup>th</sup> July, 2018 at 9:26 am was one of the final

## MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)

stages undertaken by the Commissioner Land Registration. That by the time they submitted the caveat documents on 9<sup>th</sup> July, 2018, there was no Court order and that when it was subsequently issued, he had no control on the process in the land office that had already commenced and that the Respondents have not in any way violated any Court order. That the vocation of the caveat would affect the status quo on the land which was aimed by Court.

The Applicant in its affidavit in rejoinder states that the Respondents deliberately signed all transfer instruments in favour of the Applicant and that at the time of lodgment of a caveat, the certificate of title had transferred into the names of the Applicant which was within the 1<sup>st</sup> Respondent's knowledge. Secondly, that the Court order had barred further acts of breach of the contract and that the lodgment of the caveat by the 1<sup>st</sup> Respondent was contemptuous of the said Court order.

According to the submissions of both Counsel, the following issues were raised for determination by this Court.

- i) Whether the Respondents are in contempt of any Court order?
- j) What remedies are available to the parties?

### Resolution of the issues.

#### a) Whether the Respondents are in contempt of any Court order

Counsel for the Applicant submitted that the Applicant in matters of this nature, has to satisfy three general considerations to wit;-

1. Existence of a lawful order.
2. The potential contemnor's knowledge of the order.
3. The potential contemnor's failure to comply. I.e. disobedience.

It was Counsel for the Applicant's submission that there exists a lawful order granted by His Worship Emokor Samuel on the 27<sup>th</sup> July, 2018 issued to the Applicants in the absence of the Respondents upon proper and effective service of hearing notices. That a temporary injunction was issued against the 1<sup>st</sup>-3<sup>rd</sup> Respondents restraining them from acts of further breach of contract and alienation of the land comprised in **Kyadondo Block 214 Plot 157, land at Kisasi** and that

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

the Court order has neither been challenged nor stayed nor set aside by any of the three Respondents. That the Applicant has demonstrated existence of the lawful binding order and that the act of the 1<sup>st</sup> Respondent of lodging a caveat on the suit land is an act in total contempt of the said Court order.

On ingredient 2 as to the potential contemnor's knowledge of the Court order, the Applicant's Counsel submits that the Respondents had sufficient knowledge, that though the order was issued in absence of the Respondents, that it was served on them for which they sought Court's clarity.

And on ingredient 3, it was Counsel's submission that despite the order granted, that the 1<sup>st</sup> Respondent stealthily, unlawfully and illegally went ahead and lodged a caveat on the suit land which he submits that it is in disobedience of the Court order.

In the joint submissions of the Respondents, it is admitted that there exists a lawful order granted by this Court on the 27<sup>th</sup> July, 2018 and that the time of grant is not indicated in the order, however, that the order was made in absence of the Respondents who got to know about it and became aware of the order on 24<sup>th</sup> October, 2018 through a letter from the Commandant Land Protection Unit addressed to the Commander Kampala Metropolitan Police forwarding and directing the DPC Kira Road to explain the order to the parties and that, that was the day the Respondents became aware of the Court order.

On the issue of knowledge of the Court order, it was Counsel for the Respondents' submission that at the time the Respondents executed, paid stamp duty and submitted the application for registration of the caveat. That there was no knowledge to the Respondents of the Court order and that at the time of caveating the land, there was no Court order in existence. That the Court order was granted in absence of the Respondents and thus that the Respondent had no knowledge of the Court order. It was Counsel for the Respondents' further submission that with the new Land System of land registration, a transaction takes stages and the lodgment of the caveat is one of the middle or last stages a transaction takes in the registration process, that lodgment of a caveat is not an event but a process.

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

On the ingredient of contemnor's ability and failure to comply, Counsel for the Respondents submits that the registration of the transaction at land registry is not in the control of the Respondents and thus, could not have disobeyed any Court orders. That the Respondents have always followed and observed the Court order issued, thus maintaining the *status quo*, and that ever since the Applicants received the order which was explained to them, they have never carried out any transaction on the land or carried out any activity on the land that would change the *status quo* on the land.

In rejoinder, Counsel for the Applicant contends that the affidavit in reply of the 1<sup>st</sup> Respondent is defective for prolixity to the extreme which cannot be cured by Article 126 (2), (e) of the Constitution and that it should be struck off the file since much of it contains lengthy paragraphs, narrative and without disclosure of source and that it contains some arguments not relevant to this application. That the affidavit in reply is in contravention of O.19 r3 of the Civil Procedure Rules. He relied on the case of *Male H. Mbirizi K. Kiwanuka versus AG, SC.MA NO. 1/2018* where it was noted that *an affidavit should contain facts and not arguments or matters of law*.

In the above cited case, *Prolixity* was defined while quoting the **Black's Law Dictionary, 9<sup>th</sup> Edition at page 1331** to mean, the unnecessary, superfluous stating of facts and legal arguments in pleading or evidence. *See. Page 9 of the judgment.*

Counsel referred this Court to paragraphs of the affidavit in reply to wit;- para 9, 10, 12, 14, 15, 17, 20, 21, 22, 23 and 24 as being lengthy and argumentative. Having a close look at the affidavit in reply, the 1<sup>st</sup> Respondent was stating facts and not law nor arguments.

Further, the Court (Supreme Court) in *Dr. Kizza Besigye versus Y.K Museveni E.P No. 1 of 2006*, held that; "*a Court can separate a defective part of an affidavit and use the relevant part. As such, this Court can sever the boring part from the non-boring part of the said affidavit*".

The affidavit in reply is accordingly maintained.

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

Ruling;

Contempt of Court has been defined in **Black's Law Dictionary, 6<sup>th</sup> Edition**, as

*“Anyway which is calculated to embarrass, hinder or obstruct Court in the administration of justice, or which is calculated to lessen its authority or its dignity. It is committed by any person who does any act in a willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by the one who, being under the Courts’ authority as a party to a proceeding therein, willfully disobeys its lawful orders or fail to comply with an undertaking which he has been given”.*

**Halsbury’s laws of England Vol. 9(1)** at paragraph 492 defines Civil contempt as; - *“that punishable by way of committal or by sequestration”.*

In *Wildlife Lodges Ltd versus County Counsel of Narok & Anor (2005) 2 EA 344 HCK* cited with approval from the case of *Confirm Uganda Ltd versus Megha Industries (U) Misc. App No. 1084 of 2014*, it was noted that,

*“A Court of law never acts in vain and such issues touching on contempt of Court take precedence over any other case of invocation of the jurisdiction of the Court”.*

Counsel for the Respondents contends that at the time of lodging the said caveat, the Court order was not in existence and that, though the Respondents got to know about the order later, they complied with it by maintaining the *status-quo*.

In *Stanbic Bank (U) Ltd & Jacob Power Plant Ltd versus Uganda Revenue Authority MA No. 24/2010*, Hon. Lady Justice Irene Mulyagonja gave the conditions necessary to prove contempt of a Court order as follows;-

- *Existence of a lawful order,*
- *The contemnors knowledge of that order,*
- *The potential contemnors’ failure to comply, i.e., disobedience.*

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

Once these conditions are breached in one way or another, such a party will be held liable for contempt of Court. In *Megha Industries (U) versus Conform Uganda Ltd* (supra), it was held that....civil contempt may also be punished by a fine or an injunction granted against the contemnor.

The temporary injunction which is the gist of this application was issued on the **27<sup>th</sup> July 2018** with the following orders;-

a. *A temporary injunction is hereby issued against the defendants/Respondents restraining them and their agents, employees, servants, laborers, workers or any one claiming title under or deriving authority from them, from further acts of breach of contract the subject of the main suit and alienating in anyway whatsoever with the land comprised in Private Mailo register Kyadondo 214 Plot 157, land at Kisasi, Kampala measuring approximately 2 acres currently in the names of the Applicant to hold for 8 months extendable before the honorable trial judge.*

b. *Costs shall be in the cause*

According to the above order, clause 'A' required maintaining the status quo of the land till the same is extended by the trial judge. According to annexure 'D' attached to the Applicant's affidavit in support dated 27<sup>th</sup> August, 2018 and annexure 'C' attached to the affidavit in reply dated 27<sup>th</sup> August 2018 respectively, by letter, Counsel for the Respondents after receipt of a copy of a temporary injunction sought interpretation of the same, where upon, the response was, under paragraph 3 that;

*"The purpose of the temporary injunction is to maintain the status quo on the suit property as per the date of delivery of the ruling on 27<sup>th</sup> July 2018".*

Status quo was defined to be;

*"The actual state of affairs on the suit premises prior to the filing of the suit"*

See. *Viola Ojok and Anor versus Andrew Ojok and Anor Misc App No.179 of 2007.*



## MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)

Upon perusal of the 1<sup>st</sup> Respondent's attachments on the affidavit in reply to the notice of motion, the caveat in contention was submitted for registration in the Land office on the 9<sup>th</sup> July, 2018. *see annexure 'F'* to the Respondent's affidavit in reply, and as seen in *copy of the certificate of title attached hereto*, specifically the incumbrancers page, it shows that the caveat as an Instrument was entered on the Certificate of Title on the 27<sup>th</sup> July, 2018 at 9:26 am. This was the same day that the temporary injunction was issued.

I therefore agree with Counsel for the Respondents' observation that registration of instruments in land takes a gradual process and not a one day or one minute activity. Though it is a coincidence that the day the caveat was lodged is the same day the temporary injunction was issued, as a matter of facts adduced on record, the process of lodging the caveat was started on the 9<sup>th</sup> July, 2018 before the issuance of the temporary injunction, and it cannot be assumed that the temporary injunction was issued much earlier than the caveat which was entered at 9:26 am. Hence, the Respondents cannot be held in contempt of an order which was not in existence at time of applying and lodging a caveat.

And in any case, the Applicant intends to violate the order of Court by its intention to process condominium titles and develop the suit land which act will distort the *status quo* and render the outcomes of the main suit nugatory.

Having studied the submissions of both Counsel and noted the principles established by the decided cases which have been attached hereto and relied on, I find that there is no contempt of the temporary injunction issued on the 27<sup>th</sup> July, 2018.

### Issue 2.

### Remedies.

I find that by the fact that the Applicant applied for a temporary injunction and the Respondents caveated the suit which were issued on the same day, both parties aimed at maintaining the status quo of the land.

The Applicant has failed to demonstrate any refusal by the Respondents to obey the said orders by Court, except relying on the Respondents' lodgment of a caveat which they sought to protect

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

their interests in the suit land before the issuance of the Court order, as thus, the Respondents cannot be committed to Civil Prison.

The Respondents attached a copy of their application for a caveat and the affidavit in support (see. *Annexure 'F'*) and laboured to explain the same to this Court as regards the time and date of lodgment of the Instrument on the Certificate of Title that took place before existence of the Court order and the Respondents have not also disputed the existence of the Court order.

The Applicant did no dispute as to whether the Court order was issued after the caveat had been lodged or not, or how unlawfully or wrongly it was lodged. Hence the Applicant is not justified in praying to Court for an order that the Commissioner for Land Registration vacates the caveat wrongly lodged and registered on land comprised in Kyadondo Block 214 plot 157 at Kisasi under Instrument No. 00052494 on the 27<sup>th</sup> July, 2018 by the 1st Respondent. The Commissioner for Lands cannot also be ordered to create and process condominium titles out of the suit land the subject of the head suit, which order will be contrary to the Court order in contention.

Having found no merit in this application, I refer myself to **Section 98** of the Civil Procedure Act which gives this Court the inherent powers to make orders for the ends of justice, it is accordingly ordered as follows;-

- 1) The orders in the temporary injunction vide Misc. Application No. 1137 of 2018 are hereby extended until the disposal of the main suit.
- 2) The caveat lodged by the Respondents is also maintained pending determination of Civil Suit No. 552 of 2018.
- 3) Each party to bear its own costs

I so order.

**MISC. APPLICATION NO. 083 OF 2019 - BUILDNET CONSTRUCTION - (RULING)**

.....

Henry I. Kawesa

JUDGE

29/05/2019

29/05/2019

Kayiwa Wilber for the Respondent.

1<sup>st</sup> and 2<sup>nd</sup> Respondent present.

Kakeeto Siraje of the Applicant.

Applicant representative present.

Court:

Ruling delivered to the parties above.

.....

Henry I. Kawesa

JUDGE

29/05/2019