

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
MISCELLANEOUS APPLICATION NO.706 OF 2020  
ARISING FROM H.C.C.S. NO.156 OF 2007**

**1. RICHARD OKWIRI  
2. TEDDY KIIZA  
3. TIBAKANYA MARGARET:.....APPLICANTS**

**VERSUS**

**1. KADDU MWESIGWA  
2. KISAMBIRA PETER:.....RESPONDENTS**

**RULING**

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

This application was brought under **Article 28(12) & 23(1)(a) of the Constitution of the Republic of Uganda, 1995, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, and O.52 rr1 & 3 of the Civil Procedure Rules S.I 71-1.**

The application seeks the following orders:

1. A declaration that the acts of the Respondents jointly and severally in refusing to comply with a decree of Court dated **14<sup>th</sup> May, 2015 in H.C.C.S No.156 of 2007 ordering M/s Sebco (U) Ltd** to take proprietary powers to manage and re-allocate the shops and where necessary to take vacant possession of

the whole or part of the commercial building **situate at Plot 14/18 Nakivubo Road** amount to contempt of Court.

2. Consequent to (a) hereof, the Respondents as contemnors be ordered to purge the contempt by immediately handing over the shops to the Applicants as per the compensation agreements in plot 14/18 Nakivubo Place as was ordered by Court.
3. A punishment of a fine of Ugshs.400,000,000/- (*four hundred thousand shillings*) be imposed on the contemnors (Respondents).
4. Costs of this application.
5. Any other and further orders this Honourable Court may deem necessary and expedient in the interest and protection of the rule of law.

The grounds of the application, which I shall not reproduce, are supported by two affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, and opposed through two separate affidavits in reply of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Applicants also filed two affidavits in rejoinder. Counsel for all parties filed written submissions which I have considered but, shall not reproduce.

I have handled the preliminary objection raised by Counsel for the Respondents first. This is to the effect that the 3<sup>rd</sup> Applicant has no *locus* on ground that she is not a beneficiary of the decree alleged to have been disobeyed.

I have looked at a copy of the decree attached to the Applicants' affidavits and judgment of **Civil Suit No.156 of 2007**, which show that the 3<sup>rd</sup> Applicant was excluded from, amongst the beneficiaries. Counsel for the Applicant laboured to substantiate the 3<sup>rd</sup> Respondent's *locus* by referring me to page 10 of the judgment in Civil Suit No.156 of 2007 and a handover agreement by M/s Sebco (U) Ltd in the 3<sup>rd</sup> Applicant's favour attached to the 1<sup>st</sup> Applicant's affidavit in rejoinder but, this fell short of convincing me especially since the 3<sup>rd</sup> Respondent did not file any affidavit and neither did the 1<sup>st</sup> or 2<sup>nd</sup> Applicants swear one on her behalf. As such, the preliminary objection raised by the Respondents' Counsel succeeds. This application shall thus only proceed as regards the 1<sup>st</sup> and 2<sup>nd</sup> Applicants against the Respondents.

The decree said to have been disobeyed by the Respondents stated that:

1. *That Richard Okwiri, Kaddu Mwesigwa, Kisambira Peter, Margaret Nantongo, Kalema Peter, Nyinakakomo, Batto Agency, Akuna Luzze, Kizza Tereza, Sempa R. Kamese N, Kakumba Francis, Ndege H.B., Sulaiman Kafeero, Nsubuga Kizito are beneficiaries of the compensation in Plot 14/18 Nakivubo Place.*
2. ...
3. That M/s. Sebco (U) Ltd shall take proprietary powers to manage, reallocate the shops and where NECESSARY to take vacant possession of the whole part of the commercial building situate at Plot 14/18, Nakivubo.

The Applicants' evidence is that M/s Sebco (U) Ltd took possession of the said commercial building, and proceeded to prepare assignment agreements to the various beneficiaries. That it requested them to pick their respective assignment agreements as ordered by Court but upon receipt of the same, the Respondents, together with their agents, denied them access to their premises.

For the Respondents, their evidence is that the Applicants contradicted themselves when they averred that Sebco (U) Ltd took over possession of the commercial building and handed over to them the assignment agreement, yet at the same time assert that the Respondents or agents denied them access to their premises. That, that is a clear indication that they are misleading Court since it was Sebco (U) Ltd with vacant possession of the building and not them. Further, that the 1<sup>st</sup> Applicant's affidavit is defective because he deposes to facts that he is not privy to and does not state how he came to know about them. Additionally, that the said affidavit does not indicate the order that they disobeyed and how they disobeyed it.

I have noticed an attempt by Counsel for the Respondents to supplement the Respondents' averments in his submissions, when he submits to facts not covered by the affidavits in reply. This constitutes evidence from the bar, and his submissions as far as that is concerned are hereby disregarded.

The principles governing contempt proceedings was stated in *Chuck versus Cremer (I Coop Tempt Cott 342.)*, that;

*“A party who knows of an order whether null or regular or irregular, cannot be permitted to disobey it”.*

Counsel for the Respondents cited **Barbra Nambi versus Raymond Lwanga H.C.M.A No.213 of 2017**, where Justice Flavia Senoga Anglin, defined contempt of Court to;

*“Consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice.”*

She also added that;

*“Civil contempt consist of a failure to comply with a judgment or order of a Court or breach of an undertaking of Court”.*

In the case of **Hon. Sitenda Sebalu versus Secretary General of the East African Community Ref: No. 8/2012**, Lady Justice Irene Mulyagonja stated that the conditions necessary in order to prove contempt of Court are;

- 1) Existence of a lawful order,
- 2) The potential contemnor’s knowledge of the order
- 3) The potential contemnor’s failure to comply or disobedience of the order.

It is trite law that the burden of proof lies on the party alleging contempt. See **Section 102 of the Evidence Act Cap 6**. In this case, the Applicants bear the burden of proving the above stated elements of contempt of Court.

Basing on the evidence on record, this Court finds that the first and second elements above, that is; *the existence of a lawful Court order*,

*and its knowledge*, are undisputed by the Respondents. As such, Court finds that the Applicant has proved the same.

As regards the third element, the finding is a simple one. The Applicants averred that the Respondents denied them access to the premises allocated to them by M/s Sebco (U) Ltd. The Respondents' reply to this averment was evasive. They only managed to aver that the Applicants are misleading Court because the building is in the possession of Sebco (U) Ltd, and not them. I shall illustrate the implication of this.

The parties had a dispute over a cake. Court concluded that the cake be divided amongst themselves by a third party. The third party cut the cake into several pieces, with each piece bearing a corresponding name tag. The third party called upon every beneficiary to receive his or her piece but, first by receiving a name tag and then proceed to pick a corresponding piece.

The Applicants received their name tags from the third party, but as they reached out for their piece of cake, the Respondents blocked them. As the Respondents assert, the Applicants' pieces are still with the third party, M/s Sebco (U) Ltd. Remember, however, that the third party was ordered to distribute (reallocate) the whole cake amongst the beneficiaries. Having possession of the whole cake was only ordered if "NECESSARY" for the completion of its duty, which is: dividing the cake.

So, whereas it has possession of the divided pieces of the cake, it cannot complete its duty of handing them over to some beneficiaries. Some of the beneficiaries have complained that it's all because of the Respondents.

Instead of contradicting their complaint, the Respondents only stated that the third party has possession of their pieces. Considering this, I am convinced by the Applicants' evidence that the Respondents disobeyed a Court order when they blocked their access to the premises allocated to them by M/s Sebco (U) Ltd.

Consequently, I find that the acts of the Respondents jointly and severally in refusing to comply with the decree in H.C.C.S No.156 of 2007 ordering M/s Sebco (U) Ltd to re-allocate the commercial building situate at Plot 14/18 Nakivubo Road amounted to contempt of Court.

### **Remedies:**

According to the **Halsbury's Laws of England Vol. 9(1) paragraph 492**, civil contempt

*"Is punishable by way of committal or by way of sequestration... Civil Contempt may also be punished by a fine, or an injunction may be granted against the contemnor."*

In this case, this Court hereby issues a mandatory injunction against the Respondents ordering them to hand over to the Applicants the shops which they are entitled to as per the compensation agreements in Plot 14/18 Nakivubo Place as was ordered by Court.

This must be done within 1 week of this order, failing of which an alternate sentence of 3 months committal into a civil prison is hereby issued against them.

The Applicants also prayed for an imposition of a fine amounting to Ugshs.400,000,000/- (*four hundred thousand shilling*) only against the Respondents. Although the purpose of the proceeding is to punish the contemnor, I find the said amount harsh and excessive.

In the alternative, this Court finds that the fine of Ugshs.10,000,000/- (*ten million shillings*) only is sufficient, considering the magnitude of the contempt.

This sum shall be paid by the Respondents jointly and severally, and must be deposited onto the official designated account of Court for the Registrar High Court within 1 month of this order without fail. Failure to abide by this order will attract an alternate committal to civil prison for 6 months running from the date of due default.

The costs of the application are awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants.

I so order.

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Henry I. Kawesa

**JUDGE.**

31/03/21





31/03/21:

Nyangoma Patricia for the Applicant.

2<sup>nd</sup> Applicant present.

Respondents present.

Kangaho Edward absent.

Court:

Ruling communicated to the parties above.

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Henry I. Kawesa

**JUDGE.**

31/03/21