

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO.1878 OF 2021**  
**(ARISING OUT OF CIVIL SUIT NO.62 OF 2013)**

**NIGHT NAGUJJA:.....APPLICANT**

**VERSUS**

- 1. NAMUWONGE AGNES *alias* AGNES JUUKO**
- 2. YUSUF ASUMANI *alias* KIPPO**
- 3. DDUMBA MICHEAL *alias* BAMU**
- 4. KIGUNDDU IVAN *alias* KAKONA:.....RESPONDENTS**

**Before: Lady Justice Alexandra Nkonge Rugadya.**

**RULING.**

**Introduction:**

This application is brought by way of notice of motion under the provisions of **sections 64 & 98 of the Civil Procedure Act Cap.71, Section 33 of the Judicature Act Cap.13 and Order 52 rules 1, 2, 3 & 9 of the Civil Procedure Rules SI 71-1** seeking several orders that;

- 1. The acts, conduct and destruction of the applicant's property by the respondents as a means of protesting against the judgement of court delivered on 17<sup>th</sup> September 2021 constitute contempt of the said court judgement.**
- 2. An order that the respondents re-construct the applicant's wooden and same temporary fence back to its state before its destruction by the respondents.**
- 3. The respondents be arrested, detained and committed to civil prison for a period of 6 months for being guilty of contempt of a court judgement.**
- 4. An order that each of the respondents pays Ugx. 50,000,000/= to the applicant as damages for contempt of a court judgement.**
- 5. The costs of the application be provided for.**

**Background to the application.**

The applicant instituted **Civil Suit No.62 of 2013** against the 1<sup>st</sup> respondent and one Leonard Jjuko claiming that her grandmother, the late Donatina Tazalika had during her lifetime bequeathed to the applicant the suit *kibanja*, the houses thereon as well as the household properties. That the 1<sup>st</sup> respondent who is the applicant's mother was appointed by the deceased as a caretaker of the said properties as the applicant was a minor.

That upon attaining the age of majority, the applicant requested for her property but the 1<sup>st</sup> respondent refused to surrender the same and the applicant later discovered that the defendants in the main suit had illegally and fraudulently transferred the suit *kibanja*, which prompted her to file the main suit.

Upon hearing the matter, this court in its judgement declared that the applicant duly acquired the suit *kibanja* and was entitled to full possession of the same, the defendants in the main suit fraudulently purchased the mailo interest to defeat the plaintiff's/applicant's interest.

Court then issued a permanent injunction restraining the defendants from trespassing on the suit land; that the certificate of title in respect of the suit land be cancelled from the names of the defendants. Court also issued an order of eviction against the defendants, their agents, and others in occupation of the suit property without the applicant's authority.

**Grounds of the application.**

In the supporting affidavit sworn by Ms Night Nagujja, the applicant in brief stated that she instituted **High Court Civil Suit No.62 of 2013** against the 1<sup>st</sup> respondent and her husband upon which judgement had been entered in her favor on the 17<sup>th</sup> September, 2021.

That upon being served with a copy of the judgement and decree of court, the respondents went to the applicant's home in protest of the same. The 1<sup>st</sup> respondent announced through the public address system that she'd not obey a fake court judgement; that she was still in control of the land which belonged to her since she had the certificate of title and that no one should pay rent to the applicant.

Further, that after making the said announcement, the 1<sup>st</sup> respondent went to the police and made false allegations that the applicant was illegally implementing the court judgement yet the respondent had appealed against the same and threatened to use violence against the applicant and her lawyers.

In addition, after making the said announcement, the respondents went onto the suit land on 2<sup>nd</sup> October, 2021 and declared that the judgment was just a piece of paper, they started pulling down the wooden fence, destroyed the applicant's flowers, the mobile phone which the applicant's son was using to capture the respondents and they also threw away the applicant's table, chairs, and in the process also destroyed her television set.



The applicant further averred that the court judgement restrained the 1<sup>st</sup> respondent and her agents from entering the portion of land that the applicant occupies and/or continuing to collect rent.

5 The 1<sup>st</sup> respondent has not only continued collecting rent from the premises but she has also encouraged people to continue paying the same to her and by continuing to do so and entering the suit property, the respondents not only committed acts of trespass but also in contempt of the court judgement.

10 That the 2<sup>nd</sup>, 3<sup>rd</sup>, & 4<sup>th</sup> respondents insisted that they do not know the applicant as the owner of the suit land and that they will neither vacate the same nor pay rent, to the applicant amounts to contempt of the court order.

The applicants then prayed that the respondents be ordered to reconstruct the destroyed fence and each of them makes a payment of **Ug. x 50,000,000/=** to the applicant as damages as she has suffered and is still going through trauma since the attack.

15 The 1<sup>st</sup> respondent, Ms. Agnes Namuwonge opposed the application through her affidavit in reply. The record does not however show any reply by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents or any written authority to allow the 1<sup>st</sup> respondent to depone an affidavit on their behalf. Essentially therefore, the claim against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents stands uncontested.

20 In her affidavit in reply, the 1<sup>st</sup> respondent contends that the averments by the applicant were false and that after the judgement in the main suit was passed, she lodged an appeal on 28<sup>th</sup> September, 2021 which she believes does not amount to contempt of court. She refuted the claim that the respondents went to the applicant's place in protest of the court judgement.

25 That before the applicant had filed an application for execution, not only did she demolish part of the suit premises, she also threatened the tenants with eviction and that the 1<sup>st</sup> respondent could not file an application for stay of execution as the same can only be filed when there is an application for execution filed by the applicant.

30 In addition, the plaintiff further contended that she only went to the police to find protection against the violence perpetrated by the applicant when she started demolishing the suit property and also started forcefully evicting the tenants yet the 1<sup>st</sup> respondent had lodged an appeal against the judgement. That the respondents have never destroyed any property of the applicant let alone threaten her life but on the contrary that it is the applicant who is threatening the applicants' lives.

35 The applicant also filed an affidavit in rejoinder to the 1<sup>st</sup> respondent's affidavit in reply wherein she stated *inter alia* the allegations in paragraphs 5 & 6 of the affidavit in reply that the applicant demolished part of the suit premises, threatened the tenants with evictions and that she put up barriers blocking access to the suit land are not true and that the same are not supported by any evidence.

Further, that the 1<sup>st</sup> respondent's denial that she did not encourage the tenants to continue paying rent to her are false as the same is watered down by a letter from the 1<sup>st</sup> respondent's lawyers telling the tenants to continue paying rent to her because she had appealed against the judgement.

That the 1<sup>st</sup> respondent has neither denied knowing the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents nor has she told court what was being destroyed under her supervision or adduced any evidence that the destruction at the scene was on a different portion of land not being the suit land. In addition, that the respondent has also not explained to court what she was doing at the scene.

### **Representation.**

The applicant was represented by **M/s Mpagi Sunday & Co. Advocates** while the 1<sup>st</sup> respondent was represented by **Oketcha Baranyanga & Co. Advocates**. Both sides filed written submissions as directed by this court.

Counsel for the applicant in his written submissions proposed the following issues for consideration by this court;

**1. Whether the respondents are guilty of contempt of court.**

**2. What remedies are available to the parties.**

### **Consideration by Court.**

#### **Issue no.1: Whether the respondents are guilty of contempt of Court.**

**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.

As also held in **Megha Industries Ltd vs. Conform Uganda Ltd HCMC NO. 21 of 2014** that contempt of court exists where there is a lawful court order and the potential contemnor must have been aware of the court order and failed to comply with the order.

It is now settled law that for contempt of court to be found, the following principles have to be established:-

- a. Existence of a lawful order;
- b. Potential contemnor's knowledge of the order;
- c. Potential contemnor's failure to comply, that is, disobedience of the order.

#### **1. Existence of a lawful order:**

It is not in dispute that a court order vide **Civil Suit No.62 of 2013** was granted and delivered on 17<sup>th</sup> September, 2021, extracted and served onto the 1<sup>st</sup> respondent. By the said judgement, the applicant was declared to be the lawful owner of the suit kibanja.



A permanent injunction was issued to restrain the 1<sup>st</sup> respondent from trespassing on the property and further collection of rent from the tenants on the property. These were lawful orders of court which have been delivered to the respondents through counsel, and neither been set aside nor varied.

5        **2. Knowledge of the order:**

It is a general principle that a person cannot be held in contempt if he/she has no knowledge of the court order.

But a party who knows of an order regardless of whether, in view of that party, the order is null or valid, regular or irregular or considered fake as alleged to be, cannot be permitted to disobey it  
10 by reason of what that party regards the order to be.

It is not for that party to choose whether or not to comply with such order. The order must be complied with in totality. (***See: Jackson Erasmus Ngabirano vs Col. Kaka Bagyenda-Director General Internal Security Organization & another Miscellaneous Application No.671 of 2019***).

15 From the evidence before me, it is not in dispute that the 1<sup>st</sup> respondent knew about the judgement and orders of this court. She even admits to have appealed against it. In those circumstances, I find that she was fully aware of the court order, which she claimed and made it known to all as fake.

In as far as the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are concerned, they did not file any response to this  
20 application. I have found no evidence that they were duly served with this application or the order alleged to have been violated by them. There is no proof that they were represented by the 1<sup>st</sup> respondent or by the same firm that represents her in relation to this application.

**3. Noncompliance with the orders:**

Having established that there existed lawful orders by this court which the 1<sup>st</sup> respondent was  
25 fully aware of, the final consideration is whether or not the 1<sup>st</sup> respondent failed to comply with or disobeyed the said order.

It is now trite law that a court order is a court order and must be implemented by those it targets. According to the court order extracted by the applicant's lawyers, this court issued a permanent injunction restraining the 1<sup>st</sup> respondent from trespassing on the plaintiff's/applicant's land and  
30 from further collecting any money from the tenants.

It is on record as stated by the applicant that the 1<sup>st</sup> respondent together with 2<sup>nd</sup> respondent who is her tenant and the 3<sup>rd</sup> and 4<sup>th</sup> respondents who are the grandchildren, went to the applicant's home protesting the judgement and orders of this court and that during the said protest, the 1<sup>st</sup> respondent announced via the village public address system that she will not obey a *fake*  
35 judgement and that she was still in control of the suit land.

Further, that the 1<sup>st</sup> respondent not only announced that no one should pay any rent to the applicant but she also told the tenants to have no fear of being evicted from the suit land and whoever would pay rent to the applicant would be evicted.

5 The applicant further stated at *paragraph 9* that the respondents returned to the suit land on 2<sup>nd</sup> October 2021 and started pulling down the applicant's wooden fence, destroying her flowers and her son's mobile phone, among others.

The applicant also adduced in evidence photographs of the respondents allegedly destroying the said fence in issue under the supervision of the 1<sup>st</sup> respondent. (***Annexure D1-13.***)

10 While the 1<sup>st</sup> respondent refutes the allegations by the applicant, I find the affidavit in reply vague, general and evasive as it fails to provide a reasonable answer to the applicant's claim. She neither rebuts nor denies the claim that she continues to receive rent from the suit property and has continued to encourage tenants to pay the rent to her (***refer to paragraph 13 of the affidavit in support of the application.***)

15 She does not therefore effectively rebut the evidence of disobedience adduced by the applicant nor the fact that the people appearing in the photographs supplied by the applicant are her agents. She does not also deny that the wooden fence that was destroyed was the applicant's fence but instead makes a general denial that the averments by applicant are falsehoods.

20 It is not enough for a party to throw unsubstantiated allegations at the court hoping that it will be the one to help fill in the gaps, speculate and/or apply its powers to identify and/or separate hay from the chaff.

This court has on previous occasions emphasized that a court order is not a mere suggestion and that the same must be complied with by either parties, whether or not any of the parties is dissatisfied with the same. The orders issued by this court were clear and unambiguous and took immediate effect.

25 With all due respect, without any order for stay of execution or any pending application in that direction, the applicant as a judgment creditor had every right to start enjoying the benefits accruing from her judgment unhindered.

30 Any move therefore intended to prevent her from doing so merely on the ground that there was a pending appeal cannot be proper. Besides, an appeal does not operate as an automatic stay of execution. Such conduct as displayed by the 1<sup>st</sup> respondent and her agents in shunning court orders cannot therefore be sanctioned by this court as it amounts to gross abuse and disrespect of court process; and this cannot go unpunished.

35 If the 1<sup>st</sup> respondent had genuine belief in the possibility of success of their appeal then they should not have acted as if they did not have any such hope. I am inclined to believe therefore that such acts and conduct amounted to disobedience of a lawful court order.

**Issue No.2: What remedies are available to the parties.**



The applicant prayed for an order directing the respondents to reconstruct the applicant's wooden fence, committal of the respondents to civil prison for a period of 6 months, a further order that each of the respondents pays **Ugx. 50,000,000/=** as damages for contempt as well as costs of the suit.

- 5 I have however pointed out that there was no evidence of service of the decree/orders of court or this application to the 2<sup>nd</sup> to the 4<sup>th</sup> respondents.

**a. Civil prison.**

In the case of **Re Contempt of Dougherty 429, Michigan 81, 97 and (1987)**, the court observed that;

- 10 ***"imprisonment for civil contempt is properly ordered where the defendant has refused to do an affirmative act by the provisions of an order, which either in form or substance was mandatory in character."***

It was further held that:

- 15 ***"if the contempt consists in refusal of a party to do something which he is ordered to do for the benefit and advantage of the opposite party.... The Contemnor stands to be committed until he complies with the order. The order in such a case is not a punishment but is coercive to compel the contemnor to act in accordance with the order of court."***

- 20 In the present case, this court has already established that the 1<sup>st</sup> respondent refused to obey the orders of court to cease any form of trespass on the applicant's land and to stop any further collection of rent.

- 25 The orders were mandatory in character and gave the respondents no room to ignore. When therefore the 1<sup>st</sup> respondent went to the land with her agents presumably acting on her instructions, properties were destroyed and acts of trespass were committed against the applicant, and in total defiance of the court orders.

The applicant's primary interest here however is to compel the respondents to restore the temporary fence that had been erected by the applicant; make prompt compensation for the properties destroyed by the respondents, to wit; the mobile phone belonging to the applicant's son as well as the television set and furniture destroyed.

- 30 Civil prison may not achieve the objective for which it may be intended and often presents practical problems where compensation, refund or damages are to be awarded and paid in addition, within a specific period of time. It is thus exercisable with restraint especially where there is an option of granting any such awards against the contemnor, in lieu of civil prison. It is only when the contemnor fails to meet such obligation that he/she can be committed to civil prison.

- 35 ***The 1<sup>st</sup> respondent is accordingly given only 30 days within which to restore the fence erected by the applicant or pay within that period an amount of Ugx 20,000,000/= to the***

**applicant to restore the fence. Upon failure to do either, the respondents shall be arrested and committed to prison for a period of six months, without any further recourse to this court.**

**b. Exemplary damages.**

- 5 The High Court, in the exercise of its jurisdiction, is enjoined to exercise its jurisdiction in conformity with the common law and doctrines of equity and good conscience respectively. (**See sec.14(2) of the Judicature Act**).

Exemplary damages are by their nature intended to punish the defendant/respondent – **See the case of A vs. B [1974] INZLR 673 and 677 and Loomis vs. Rohan (1974) 46 DLR (3d) 423 cited by Hon. Justice Katureebe in his paper on damages dated 18.06.2000.**

10

In the exercise of the discretion of this court, it is my opinion that it would be appropriate in the instant case for the respondents to pay exemplary damages to the applicant. The applicant prayed for a sum of **Ug.x. 50,000,000/=** as exemplary damages to be paid by each of the respondents.

**The applicant has proved that actual loss was occasioned to her on account of the respondents' high-handed behavior in contempt of this court, which calls for punitive damages. I would accordingly allow a sum of Ug.x 50,000,000/= (Uganda Shillings fifty million only) to be paid by the 1<sup>st</sup> respondent; with interest of 12% p.a from the date of this ruling, until payment is completed in full, being exemplary damages for contempt of this court's orders.**

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- 20 Consequently, this application is granted, with costs to the applicant, to be paid by the 1<sup>st</sup> respondent.

**I so order.**

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**Alexandra Nkonge Rugadya**

**Judge**

**18<sup>th</sup> January, 2022.**

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*Delivered by mail*  
*Ambage*  
*18/1/2022*