

THE REPUBLIC OF UGANDA
IN THE HIGH COURT F UGANDA AT KAMPALA
LAND DIVISION

MISCELLANEOUS APPLICATION NO. 2041 OF 2020

5 DR. DAVID KAGGWAAPPLICANT

VERSUS

1. AUDREY MUSIIMENTA

10 2. COMMISSIONER LAND

REGISTRATION.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya

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RULING:

Introduction:

The applicant, Dr. David Kaggwa seeks exemplary and punitive
damages of **Ugx 100,000,000/=** against the 1st respondent, Ms
20 Audrey Musiimenta; an order committing her into prison; and
compelling her to obey the orders of this court.

The affidavit in support was filed by Dr. David Kaggwa, who is also the applicant in **HCMA No. 1911 and 1912 both of 2017**; the judgment debtor in **HCCS No. 078 of 2011** and the appellant in **CACA No. 195 of 2017**.

- 5 It was also noted that this matter had been filed in the Execution and Bailiffs Division as **Misc. Application No. 711 of 2019** and later transferred to the Land Division and given file **No. MA No. 2041 of 2020**.

Representation:

- 10 The applicant was represented by **M/S Magna Advocates**. The 1st respondent was represented by **M/S Kasirye, Byaruhanga & Co. Advocates**. The two respondents were duly served but did not file responses.

Background to the application:

- 15 Briefly, the 1st respondent, Ms Audrey Musiimenta filed **HCCS No. 078 of 2011** against the applicant and 4 others for declarations among others, that they were trespassers on the suit property comprised in **Kyadondo Block 221 plot 772**; a permanent injunction to issue against the defendants; cancellation of the title from names of Emily Mugisha and John Junior Sekindi; and entry of
20 the plaintiff/ 1st respondent's name onto the register and title of suit property.

The court ruling in her favor among other orders directed the applicant to vacate the suit property and also condemned him in damages and costs.

Consideration of the issue:

- 5 I have carefully looked at the court proceedings, pleadings and submissions by counsel. As noted by the counsel for the applicant there was no reply from the respondents despite their having acknowledged receipt of service of the application and submissions, as court had directed.
- 10 The issue to be addressed herein by this court is whether the application merits the order sought against the respondents for contempt of court.

The whole essence of litigation is lost if orders issued by court in its normal functioning are not complied with in full. **(Refer: Muriisa**
15 **Nicholas vs Attorney General, HCMA No. 35/2012 (unreported).))**

Contempt of court is always perceived as a form of abuse of court process. **(Stanbic Bank vs the Commissioner General URA HCMA**
No. 42/2010 (unreported).

20 Thus in all cases, a party who knows of an order whether null or valid, regular or irregular cannot be permitted to disobey it as long as it remains undischarged. **(Hon. Sitenda Sebalu vs Secretary General of the East African Community Ref No. 8 / 2012.)** Any party who fails to comply with an order without proper explanation therefore does so at his/her own peril.

In the present case, the applicant filed an appeal, vide: **CACA No. 195 of 2017**, challenging the judgment and decree of this court made in **HCCS No. 078 of 2011**.

5 .In order to protect his interests pending the appeal, Dr. Kaggwa filed an application for a stay of execution. An interim order for a stay of execution was issued and a main stay granted on 31st October, 2017 by way of consent. (**MA. No. 1911 of 2017 and 1912 of 2017**).

10 The applicant's main point in this application was that the *status quo* at the time of passing judgment, and prior to the execution of decree was that the suit land comprised in **Kyadondo Block 221, plot 772** was registered in names of Emily Mugisha and John Junior Sekindi.

15 That in the presence of their respective counsel, the 1st respondent had conceded to the application which he filed staying the orders issued under **HCCS No.078 of 2011**, pending the determination of the appeal. The said consent was endorsed by court and orders had been issued in those terms on 31st October 2017.

20 At the time when the consent was entered and endorsed by this court, Mr. Paul Seguya and Mr. Joseph Kyazze represented the applicant, while Mr. Paul Rutisya appeared with Diana Nabuuso for the respondent, before Justice Christopher Madrama, (as he then was.)

Annexure D is a statement of search as at 27th June, 2018 indicating that the 1st respondent got registered on the title on 17th November, 2017. This was less than a month after court had made the order for stay of execution.

It was not surprising therefore that the 1st respondent who had not challenged that order filed no response in objection to this application. She had no reason to justify her defiance of an order, freely entered on her behalf by her own two counsel.

5 *Prima facie* any order made in the presence of, and with consent of counsel is binding on all parties to the proceedings or action and those claiming under them and cannot be varied or discharged, or violated unless of course if it had been obtained by fraud, mistake, misapprehension or in contravention of court policy, (none of which
10 had been pleaded in this application). (***Refer: Attorney General & Anor vs James Mark Kamoga & Anor SCCA No. 8 of 2004***).

Once endorsed by court, it therefore becomes a court judgment and binding on all the parties, who are therefore estopped from asserting different positions from one as stipulated in the agreement.

15 Accordingly, any transactions made or entered by any person in contravention of that order made in *rem*, destroyed the underlying objective for which the order had been intended.

The respondents knew or had constructive knowledge of the existing order of stay but chose to deliberately disobey it. They went ahead to
20 cause and/or effect a transfer and obtain the registration of the land into 1st respondent's names- an act that cannot be left unpunished by this court.

A court order is not made in vain. It is also trite that civil contempt is punishable by way of committal or sequestration.


Given those facts and the above findings by this court, an award of **Ugx 30,000,000/** shall be paid as punitive damages by the respondents for acting in violation of a valid and undischarged order of this court, vide: **MA No. 1911 of 2017.**

5 Costs awarded to the applicant.


Alexandra Nkonge Rugadya

Judge

Delivered via trail


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14/4/2021

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13th April, 2021