

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS APPLICATION NO.832 OF 2017

ARISING FROM MISCELLANEOUS CAUSE NO. 12 OF 2017

YASIN OMAR ----- APPLICANT

VERSUS

- 1. KAMPALA CAPITAL CITY AUTHORITY**
- 2. GODFREY B. KISEKKA-[TOWN CLERK MAKINDYE DIVISION]**
- 3. HOUSING FINANCE BANK----- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Contempt of Court Orders under Section 33 of the Judicature Act and section 98 of the Civil Procedure Act seeking orders that;

- a) A declaration that the respondents are in Contempt of Orders in Miscellaneous cause No. 12 of 2017-YASINI OMARI vs ATTORNEY GENERAL AND DEBORAH MBABAZI.
- b) An Order that the applicant be compensated by way of General and Punitive damages in the amount of 1,500,000,000/= by the respondents.
- c) An Order that the respondents do pay a fine in Court
- d) The 2nd respondent Godfrey B. Kisekka be punished by detention in Civil prison for repetitively disobeying court orders.
- e) Costs of this application be provided for by the respondents.

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- a. The applicant was on 3rd September 2011 lawfully appointed Chairperson of Bukasa Ward Urban Council, Makindye Division.
- b. The Acting Resident City Commissioner purported to remove the Applicant from office of the Chairperson in total disregard of the Advice given by the Minister for justice and Constitutional Affairs, Solicitor General, Inspector general of Police and Ministry of Local Government.
- c. The applicant petitioned court and was granted an interim order restraining the Attorney General and the Acting resident District Commissioner and other government agencies from removing him from office or implementing the decision.
- d. The court gave final orders in that matter on 17th August 2017 confirming the appointment of the applicant and restraining the re-instatement of Cissy Bamuhingire.
- e. The respondents in contempt of the said orders chose to ignore, disobey and acted contrary to the said orders.
- f. That the respondents have failed and or refused to update Bukasa Wards Bank Account in defiance of the court Order.

The 1st and 2nd respondents opposed this application and averred that the applicant has never served them with main application or any order arising therefrom and secondly, that the meeting of 3rd September 2011 flouted the Kampala Capital City Authority Act, rules of natural justice and lacked jurisdiction to conduct the elections. Thirdly, that the election of the applicant was illegal.

The 3rd respondent opposed the application on grounds that there were different communications stopping them from dealing with the existing bank signatories which they complied with. Thereafter, the applicant wrote seeking a bank statement or information pertaining to the bank account. Immediately they received a letter from the 2nd respondent advising them not to deal with the

applicant since he was not properly elected and that the bank should maintain the status quo. The bank as a precautionary measure froze the account in order to avoid any risk to the funds on the account. It is the 3rd respondent who is supposed to introduce the new signatories to the account.

To appreciate the decision of this court I find it proper that I lay down the chronological sequencing of the events leading to this application as shown from the pleadings.

- a) The applicant was on 3rd September 2011 was appointed as the Chairperson of Bukasa Ward Council, Makindye Division, after the council had removed the then Chairperson Cissy Bamuhangire for failure to perform her functions in 3 council meetings in which her accountability of public funds was requested.
- b) The Acting Resident District Commissioner-Deborah Mbabazi who was in disagreement of these developments attempted to remove the applicant from office.
- c) The applicant went to court and was granted an Interim Order on 18th January 2017 and the same interim was extended several times, i.e 1st March 2017, 10th April 2017 and later a Temporary injunction was granted until the determination of the suit.
- d) The Town Clerk-2nd respondent wrote wrote a letter to the Chairpersons of the new zones informing them that he doesnot recognise the adhoc committee and that all decisions taken on behalf of Bukasa Urban Council were illegal and of no consequence.
- e) That on 10th April 2017, the applicant wrote a letter to the Town Clerk imploring him to respect court orders as a civil servant.
- f) The court decided the main Cause on 17th August 2017 and inter alia quashed and declared the decision of Acting Resident District Commissioner-of trying to remove the applicant and his committee from office and re-instating Cissy Bamuhangire as being high handed, null and void, illegal, ultra vires, irrational, unreasonable and abuse of office.
- g) The applicant extracted the order of court and wrote a letter on 22-09-2017 to the Mayor Makindye Division forwarding the same and the different

offices were copied into the said letter including the 2nd respondent as the Town clerk.

- h) The 2nd respondent wrote a letter on 30th October 2017 to Branch Manager, Housing Finance Bank-Namuwongo Branch, restraining them from recognising the applicant.
- i) The applicant wrote a letter on 1st November 2017, to the Head of Legal Department-Housing Finance Bank.
- j) The applicant after failing to achieve what he wanted, he filed this application to court on 22nd November 2017.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Two issues were proposed for court's resolution;

1. Whether the respondents' are in contempt of the Court order dated 7th September 2017?
2. Whether the applicant is entitled to the remedies sought in the application.

I shall resolve this application in the order of the issues so raised. The applicant were represented by Mr Najib Mujjuzi whereas the 1st and 2nd respondent were represented by Mr David Oyo and the 3rd respondent was represented by Ms Doreen Nangwala.

ISSUE ONE

Whether the respondents are in contempt of the Court Order dated 7th September 2017.

Mr Mujjuzi for the applicant submitted that the applicant after obtaining the ruling of the court, extracted the same and served it on the different offices. And the different offices received the said court Order and it was duly acknowledged.

The applicant's counsel cited different authorities on the question of determining a contempt of court proceeding to wit;

Megha Industries (U) Ltd vs Comform Uganda Limited HCMC No. 21 of 2014 relying on **Stanbic Bank & Jacobsen Power Plant Ltd vs Uganda Revenue Authority**, the court set out the elements that must be proved before an application for contempt can succeed as follows;

- (a) The existence of a lawful Order.
- (b) The potential contemnor's knowledge of the order,
- (c) The potential contemnor's ability to comply and
- (d) The potential contemnor's failure to comply

The applicant's counsel argued this application in the order of the above elements.

The High Court issued an order in the main cause and for ease of reference the same is reproduced herein below;

The Republic of Uganda

In the High Court of Uganda at Kampala

Civil Division

Miscellaneous Cause No. 12 of 2017

Yasin Omari:.....Applicant

Vs

- 1. Attorney General*
- 2. Deborah Mbabazi (Ag RCC-Kampala:.....Respondents*

ORDER

This matter coming this 17th day of August 2017 before His Lordship Stephen Musota; in presence of Mr. Najib Mujuzi counsel for the Applicant, Mr. Geoffrey Madate State Attorney for the respondents;

It is hereby ORDERED that;

1. *A declaration that the 2nd Respondent's Unilateral decision communicated to the applicant on the 14th day of January 2017 at Muyenga Community Police, purporting to remove the applicant from the position of Acting Chairperson Bukasa Ward Urban Council and consequently reinstating Cissy Bamuhangire is high handed, null and void, illegal, ultra vires, irrational, unreasonable and an abuse of office.*
2. *A declaration that the Government of Uganda, Kampala Capital City Authority (KCCA), and the Uganda Police do not implement the said Acting Resident City Commissioner's decision.*
3. *A declaration that the 2nd respondent acted illegally and ultra vires her powers.*
4. *An Order of certiorari to move this court to set aside and quash the respondent's decision communicated to the Applicant on 14th day of January 2017.*
5. *An injunction to restrain the Respondent and /or any of its agents from implementing the said decision.*
6. *An order of prohibition to issue against the Acting resident City Commissioner or agents or representatives or persons acting under her authority from implementing the impugned decision.*
7. *Costs of this application shall be born by the respondents' jointly and severally.*

The applicant in his affidavits in support and rejoinder, indeed contended that the Order was duly served on the respondents and has attached an affidavit of service by a one Busulwa a court process server at the High Court.

The applicant further argued that the respondent's just chose to ignore or disobey the court order without assigning any justification whatsoever. That when the 3rd respondent received the court order sought the guidance of the 2nd respondent and the reply of 30th October 2017 was written to the bank....wherein he stated that;

“ ...this is to notify you that Mr Yasin Omar is not the duly elected Chairman for Bukasa Parish and as such lacks the mandate to address your office on this matter.

I will introduce to you new signatories after the pending Local Council elections.

In the meantime, the status quo should remain.....”

Mr Mujjuzi further submitted that the 2nd respondent was in contempt when he wrote such letter to the 3rd respondent.

Mr Oyo for the respondent in opposition submitted and contended that the applicant did not exercise due diligence in serving the respondents with the Order in issue at the time it was made.

He further submitted that what is attached in proof is a mere letter addressed to the Mayor of Makindye Division Urban council and not an order. He stated further, that there was a letter addressed to the 3rd respondent and the 1st and 2nd respondents were only copied in. No evidence has been adduced of the 1st and 2nd respondents having received copies of the order. The letter relied upon by the applicant addressed to the 3rd respondent does indicate that some orders were attached to it but to the contrary, it had no attachments at all at the time it was served on the 2nd respondent.

The letter itself indicated that the applicant had been confirmed as a chairman of Bukasa Ward yet at the time of filing the cause, he was only an acting Chairman therefore the absence of a formal election that could have qualified the applicant as a substantive chairman of Bukasa Ward, the 2nd respondent refrained from relying on it in the belief that the court could not have sanctioned an illegality and jeopardized its integrity.

The 1st and 2nd respondent's counsel also submitted that the affidavit of service is dated 17th January 2017, which is 7 months prior to the events being attested too. Therefore the affidavit of service has a major falsehood and the court should not rely on it.

Ms Doreen Nangwala, the 3rd respondent's counsel submitted that according to the order from court, the 3rd respondent was not mentioned anywhere in that court order or directed to do any act.

According to her the said ruling was a judgment in personam and not a judgment in rem. That the object of the main cause in this matter was to enforce a personal liability against the mentioned parties in the main cause and not third parties such as the 3rd respondent. Therefore according to her the respondent cannot disobey what is not directed to it.

She further submitted that the type of customer to the bank in the present case is a local government and the bank policy is that the Town clerk is responsible for authorising the new signatories and signing mandate. Therefore, when the applicant sought the information about the bank statement, they had to seek clarification from the Town clerk as the head of public service at the Division.

I have thoroughly considered this application, the affidavits and submissions of the respective counsel. The 1st and 2nd respondent's counsel has submitted on an affidavit of service of the applicant being filed 7 months prior to the events in issue. Therefore according to him this was a falsehood and it cannot be relied upon.

I have critically examined the said affidavit of service, its contents are clearly making reference to events of 17th October 2017 and the letter upon which it was received by the different offices shows it was received October 2017. At the bottom in the jurat, there is a typed year as 2017, but beside it is number 8 written in ink. The said affidavit was filed in court on 17th January 2018 and not 2017 as the 1st and 2nd respondents counsel want this court to believe and above all it would not make any sense, since the court had not yet issued the said order which was served. The court granted the order on 17th August 2017.

There is an order of court that quashed the decision of the RCC Kampala who attempted to remove the applicant as the Adhoc Chairperson of Bukasa Parish Ward. The sum effect of all this is that, the applicant remained in the same position he has been holding since 2011 after the then Chairperson Bukasa Ward Cissy Bamuhangire was removed.

The said Order has never been appealed against and it leaves the applicant in that position he holds as Chairman AD HOC Committee-Bukasa Ward Urban Council. This order of court although it was in personam it binds other members of the public or third parties and they ought to recognise the applicants position since he was replace the said chairperson. The court cannot accept that there is a vacuum after the removal of the former chairperson whether illegally and what the RCC attempted to do was quashed by this court. The said judgment is in respect of a public office and it is not a private office of the applicant. Therefore the Judgement is in rem.

The court order arising out of the court ruling in this matter was a lawful order of the court and ought to have been obeyed until set aside by a competent court. The submission of counsel for the 1st and 2nd respondent that the said order was never served on or that they are not aware of the existence of such an order is not believable by this court for the following reasons.

Firstly, there is an affidavit of service on record showing that the said order was served on the different offices which duly acknowledged service by stamping on the said letter. The 1st and 2nd respondents counsel's submission is that they were only copied in and that the said letter which was received never had the documents and Order referred to in the letter. I find this quite unbelievable and incredible, since they should have refused to receive the letter if it did not have the annexures which are referred to.

Secondly, the 2nd respondent wrote a letter on 30th October 2017 to the branch Manager stopping them from dealing with the applicant. It is clear that by the time the 2nd respondent wrote such a letter was fully aware that the applicant had been confirmed as the holder of that office in acting capacity and that explains why he stated in the said letter that; **“This is to notify you that Mr Yasin Omar is**

not a duly elected chairman.....I will introduce to you new signatories after the pending Local Council elections.”

The 2nd respondent in his view, he refused to obey the said court because according to him in paragraph 9 of his affidavit; The meeting of 3rd September 2011 that appointed the applicant, that purported to elect the applicant, as Chairperson of Bukasa Ward Council, flouted the Kampala Capital City Act, rules of natural justice and lacked jurisdiction to conduct elections.

This is an admission for the contempt and that explains why he refused to accept the Chairman-applicant and it is also clear that the 2nd respondent was fighting for the rights of the former office holder- Cissy Bamuhigire who had been removed from office.

This argument cannot stand since the 2nd respondent was bound by the decision of the court whether it was erroneous or illegal. The procedure for challenging an illegal order is by appeal or application to the same court to review its decision. This was never done and the 2nd respondent's argument that the letter was confusing does not stand and he ought to have verified the existence of the order through the 1st respondent's legal department and not to take the law in his own hands by refusing to heed to the order given by the court.

The primary purpose of contempt power is to preserve the effectiveness and sustenance of the power of the Courts. **People vs Kurz 35 Mich App 643,656(1971)**

The rule of law requires that orders of the court be respected and obeyed and that duty equally applies even where a party is dissatisfied with an order and has appealed against it.

Contemnors undermine the authority and dignity of the courts and must be dealt with firmly so that the Courts authority is not brought in disrepute.

The 2nd respondent throughout the proceedings of the main cause, was informed by the applicant in the different letters about the existence of interim orders and later the temporary injunction.

The effect of the final orders given in this matter required the 1st and 2nd respondent to recognise the applicant's position as the new chairperson of Bukasa Ward Council. The 2nd respondent outrightly refused to recognise the applicant as the new office bearer as set out in his affidavit in reply paragraph 9:

“ That the meeting held on the 3rd day of September 2011, purporting to have elected the applicant, as Chairperson of Bukasa Ward Council, flouted the Kampala Capital City Act, rules of natural Justice and lacked jurisdiction to conduct elections to wit;

- i) It was not called or presided over by an Assistant Returning officer.
- ii) The Ward Urban Council lacked the requisite quorum to elect a Chairperson.
- iii) The Village Urban Council and Ward Urban Councils did not have and still have no legal existence until elections for offices therein are held.
- iv) The Chairperson at the time, Cissy Bamuhangire was not given a right to be heard before being removed from office.

In paragraph 10 of his affidavit he states that;

That the election of the Applicant as Chairperson of Bukasa Ward Urban Council, Makindye Division was illegal.

The above paragraphs are indicative of the 2nd respondent's reasons for refusing to recognise the applicant as the Chairperson. The 2nd respondent as an aggrieved person against the applicant holding the said office as Chairperson, has never gone to challenge what he alleges was illegal. And contradicts himself further by stating that the said Councils have no legal existence. Why was he interested in having the said Former Chairperson-Cissy Bamuhangire to take back her office?

The person directly aggrieved by the applicant holding the said position-Cissy Bamuhangire has never challenged her removal from office since 2011, and it was the Acting Resident District Commissioner Kampala-Deborah Mbabazi who was trying reverse the decision of Bukasa Ward Council on 17th January 2017 at Muyenga Community Police. Which decision was quashed by this honourable court and the same has not been appealed against.

The 2nd respondent's refusal to recognise the applicant in the said position is as a result of the complaints made by the applicant for accountability of public funds collected from KCCA Community Toilets amounting to 77,760,000/=, which matter was reported at Kabalagala Police Division.

The letter written to the bank clearly states so, that the status quo should remain until new elections.

The 2nd respondent has decided to ignore the clear court order and in his wisdom call the election of the applicant in 2011 as being illegal. As noted earlier, whether an order is hopeless or does not make sense, it must be obeyed and complied with and it is not up to the party to give it any interpretation to suit what they want.

For the reasons I have outlined herein, I find merit in this application to the extent that the 2nd respondent is in contempt of court Order dated 17th August 2017.

The 1st respondent is not in contempt since the orders are enforceable through Civil servants and it is such officers who must obey and respect the orders of court.

The 3rd respondent in their evidence they have shown how they responded to the court Order when served on them. In their letter dated 18th October 2018, they sought clarification from the 2nd respondent for authentic communication introducing the new signatories to the account and the signing mandate of the account.

It was the 2nd respondent's responsibility to write to the bank introducing the applicant and others as new signatories to the account. The applicant according to the bank guidelines must be introduced by the Town clerk and he could not merely present an order and seek to be introduced by way of a court order.

The 3rd respondent was right not to risk the public funds since the 2nd respondent as the officer directly responsible had refused to introduce the applicant and other signatories.

I find that the 3rd respondent was not in contempt of the Court order dated 17th August 2017.

ISSUE TWO

Whether the applicants are entitled to the remedies sought in the application.

I have considered the prayer of the applicant for the respondent to pay **1,500,000,000/=** as punitive damages, An order for the respondents pay a fine in court and that the 2nd respondent-Godfrey B. Kisekka be punished by detention in civil prison for repetitively dis obeying court orders.

In the circumstances of this case, a fine of 20,000,000/= for contempt of court order be deposited in court should be sufficient to purge the contempt against the ***2nd respondent-Godfrey B. Kisekka.***

The said fine shall be paid within 90 days of the date of this Order and the costs of these proceedings shall be borne by the 2nd respondent to the applicant.

SSEKAANA MUSA

JUDGE

9th /07/2018