

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO.593 OF 2019
ARISING OUT OF MISCELLANEOUS CAUSE NO.117 OF 2016

BIN-IT SERVICES LIMITED ===== APPLICANT

VERSUS

1. KAMPALA CAPITAL CITY AUTHORITY
2. EXECUTIVE DIRECTOR, KAMPALA CAPITAL
CITY AUTHORITY ===== RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed a Contempt of Court application brought under **section 64(c) & 98 of the Civil Procedure Act Cap 71** seeking the following orders;

- a) An order that the Executive Director of the 2nd Respondent be arrested and committed to a Civil Prison and the property of the 1st Respondent be attached for violating the Orders of Court in **Miscellaneous Application No. 117 of 2016: Bin IT Services Limited versus Kampala Capital City Authority & 2 Others** which were issued against the 1st Respondent.

- b) An order that the Respondents compensate the Applicant by way of Aggravated and Exemplary damages of **UGX 1,500,000,000/=** (One billion five hundred million shillings) for the financial loss caused by the Respondents' contemptuous actions.

c) The Respondents be fined appropriately by this Honourable Court as a sanction for contemptuous conduct.

d) Respondents pay the costs of this Application.

The main ground upon which this application is premised is that;

The violation of the existing Court Order by refusing to issue the Applicant with a Trading License despite the Applicant Company meeting all generally applicable and rational requirements for the business of collecting garbage in Kampala.

This application was supported by the affidavit of Alvin Nzaro the Managing Director of the applicant which sets out the grounds which briefly are;

On 21st June 2016, the Applicant applied in the High Court for an order of Certiorari, Prohibition, Mandamus, damages and costs against the 1st Respondent, Kampala Solid Waste Management Consortium Limited and Homelink Uganda Limited. Subsequently, the court issued various orders against the Respondent. These among others included an order of certiorari quashing the decision of the Respondents that purported to conscript all residents of Kampala into the council's garbage collection system without the option of residents contracting with authorised private collectors for solid waste collection service. These Orders have been re-stated below for emphasis.

(a) An order of certiorari issues to quash the decision of the 1st Respondent that has the effect of conscripting all the residents of Kampala into the council's solid waste collection system without the option of residents contracting with authorized private collectors for a solid waste collection service.

(b) An order of Mandamus issues directing that the 1st Respondent to authorize all or any person(s) willing and able to meet the generally applicable and rational licensing requirements for the business of collecting garbage without victimization of the Applicant.

(c) An order of Mandamus issues directing the 1st Respondent to publish another public notice informing the residents of Kampala about their right to contract with authorized private collectors for a solid waste collection service and opt out of the 1st Respondent's garbage collection system together with the list of authorized private collectors.

(d) In the result, this application is allowed with costs against the 1st Respondent. The 2nd Respondent is denied costs because it is a beneficiary of the 1st Respondent's refusal to authorize the private garbage collectors.

It is because of the non-compliance with the above Orders that the Applicant Company decided to bring this application against the Respondent for orders sought in the Notice of Motion.

ISSUES FOR DETERMINATION

1. Whether the Respondents are in contempt of court orders issued in Miscellaneous Application No. 117 of 2016.
2. What are the remedies available to the Applicant?

ISSUE 1:

Whether the Respondents are in contempt of court orders issued in Miscellaneous Application No.117 of 2016

Counsel for the Applicant submitted that the discretionary power of the court to grant the orders sought in this is derived under section 98 CPA 71, Section 33 of the Judicature Act Cap 13 which in essence confer discretion upon court to grant orders to stop contempt of court orders to ensure that justice is done and to prohibit acts, words or behaviour that obstruct or have the potential to obstruct the smooth administration of justice.

Applicant counsel submitted that Black's law Dictionary 7th Edition by Bryan A. Garner, at page 313 defines contempt of court as conduct that defies the authority or dignity of a court or legislature. This can also be called civil contempt. Civil contempt occurs when the contemnor wilfully disobeys a court order. This is also called indirect contempt.

Civil contempt occurs when the contemnor wilfully disobeys a court order. This is also called indirect contempt because it occurs outside the court's immediate realm and evidence must be presented to the court to prove the contempt. It's a violation of the rights of one person i.e. disobedience of a court order. Also refer to *Civil Procedure and Practice in Uganda*, 2nd Edition by Musa Ssekaana & S.Ssekaana, page 38.

The applicant counsel submitted that, for contempt of court to exist, the complainant must prove four elements as stated in the cases of *Ekau David verses Dr. Jane Ruth Achieving & 2 Others Miscellaneous Application No. 746 of 2018*, and *Opec Prime Properties Ltd versus Attorney General & 4 Others Interlocutory Application No. 776 of 2018* such as:

- a) The existence of a lawful order.
- b) The potential contemnor's failure to comply that is disobedience of the order.
- c) The potential contemnor's failure to comply that is disobedience of the order.

Counsel for the Applicant further submitted on the first 2 elements jointly and the 3rd one separately so as to establish whether the Respondents were in contempt of court orders or not.

- a) *An order of certiorari issues to quash the decision of the 1st Respondent that has the effect of conscripting all the residents of Kampala into the council's solid waste collection system without the option of residents contracting with authorized private collectors for a solid waste collection service.*

- b) An order of Mandamus issues directing that the 1st Respondent to authorize all or any person(s) willing and able to meet the generally applicable and rational licensing requirements for the business of collecting garbage without victimization of the Applicant.*
- c) An order of Mandamus issues directing the 1st Respondent to publish another public notice informing the residents of Kampala about their right to contract with authorized private collectors for a solid waste collection service and opt out of the 1st Respondent's garbage collection system together with the list of authorized private collectors.*
- d) In the result, this application is allowed with costs against the 1st Respondent. The 2nd Respondent is denied costs because it is a beneficiary of the 1st Respondent's refusal to authorize the private garbage collectors.*

The said court orders were made in the presence of the Applicant's counsel and the Respondents' counsel, Mr. Dennis Byaruhanga. They were also served on the Respondent's counsel who later on as evidenced from the court proceedings, participated in the taxation prove. The foregoing evidence on court record shows that indeed the said courts orders were lawful and that the Respondents were aware of the same. It is also a cardinal obligation of a lawyer who represents his client in court to update them about court proceedings. In this case the obligation fell on the Respondent's counsel. See *Opec Prime Properties Ltd versus Attorney General & 4 Others Interlocutory Application No. 776 of 2018*, page 4.

Further, it's their submission that the Executive Director, KCCA was obliged to comply with the court order in his official and administrative capacity. This is derived from Section 19 (d) KCC Act which states that; "(d) be responsible for co-ordination and implementation of national and council policies, laws, regulations, byelaws, programmes and projects".

It is our submissions that the Respondents knew about the said court orders and ought to obey them regardless of what they regard the order to be. It is not for the Respondents to choose whether or not to comply with the court orders. The said court orders must be complied with in totality in all circumstances. The Respondents never challenged the court orders at all and therefore in existence of such orders, they must be obeyed, otherwise by the Respondents disobeying such court orders is not accepted as Court never acts in vain. Refer to *Nile Construction General Contractors Ltd & Anor vs. Prof G.W Kanyeihamba HCMA No. 405 of 2016 at page 9 which cites with approval, the case of Housing Finance Bank Ltd & Anor Vs. Edward Musisi CAMA No. 158 of 2010 at page 8-9.*

- e) The potential contemnor's failure to comply that is disobedience of the order.

Counsel for the Applicant further submitted that despite issuance of the said court order, the Respondents have failed to implement the same without any justification. It should be noted that the Respondents in their Affidavit in Reply under paragraphs 12 and 13 stated that the Applicant should have applied for a permit as opposed to a license.

The applicant's counsel submitted as follows regarding the above issue of License or Permit:

- i) The Applicant Company has at all material times applied for a Trading License to the Directorate of Public Health and Environment. This is a Directorate created section 24 of the KCC Act and Regulation 1 (d) of the 5th Schedule. Contrary to the Respondents' averments, an Application for a Trading License Certificate was rightly made to the Directorate of Public Health and Environment. Also, during cross examination, the Respondent's deponent confirmed that he has never made a response to the said Application Letters. The mandate of the Directorate of Revenue is only to collect local revenue. Even then, it would be double taxation to pay fees to both directorates. Refer to

paragraph 11, 12, 13 and 14 of the Affidavit in Support. Also refer to paragraph 11(b) and (c) of the Affidavit Rejoinder.

- ii) It's also our submission that the words: License and Permit are used interchangeably in Kampala Capital City Authority Act, 2010, Kampala City Council (Solid Waste Management) Ordinance, 2000 and the National Environment (Waste Management) Regulations, S.I 52/1999). None of these laws specifically states that a party has to apply for a permit through the Directorate of Public Health and Environment. Refer to Section 40 (d) of the Local Governments Act, Section 85 (3) of the KCC Act, Regulation 3 (b) of the 3rd Schedule to the KCC Act, Section 4 (1), 17 of the Kampala City Council (Waste Management) Ordinance. All these laws make reference to License. Also refer to paragraphs 11 (a) of the Affidavit in Rejoinder.
- iii) Further, the Respondents' deponent also confirmed that there's no Prescribed Form used in applying for a Permit or License. Section 40 of the solid Waste Ordinance states that an application for a permit of any kind shall be made to the council in a prescribed form. This form does not exist. Also, the Black's Law Dictionary, 10th Edition by Bryan A. Garner, pages 1059 and 1322, uses the words License and Permit interchangeably in the definitions. It defines a License as: "A privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorised to do some act or series of acts that would otherwise be impermissible... Also termed Permit."

It is the Applicant's submission that the Respondents acted in contempt of the court order. The Applicant rightly applied for a License to the Respondent after issuance of the Court Orders. The said application letters were duly received by the Environmental Department but it chose not to respond and / or put the court orders into effect. The Applicant was also unsuccessful in applying for a License online notwithstanding that it has a coin. The

Respondents' failure to respond despite the many applications made to its office erodes public trust and confidence in the judiciary. Refer to the various applications under Annexure D, E, F, G, H, I J, J, K and L of the Affidavit in Support.

It's also the Applicant's submission that despite the court order dated 12th July, 2018, the Respondents have continued to conscript the residents of Kampala into their solid waste management system without the option of contracting with private collectors for a solid waste collection service. In addition, court further directed that the 1st Respondent publishes another notice informing Kampala residents about their rights to contract with private solid waste collectors.

This was derived from section 23 of the solid waste management ordinance, 2000 which states that: "Residents who do not wish to use the council's solid waste collecting system shall be required to contract with authorised private collectors for a solid waste collection service".

The 1st Respondent has always issued various notices to the Applicant's customers directing them to only contract with the 3 concessionaires such as Nabugabo Updeal Joint Venture, Homeklin Uganda Limited and Kampala Solid Waste Management Consortium and not the Applicant. In all these notices at page 2, paragraph 3, the Respondent states that;

"It is illegal for any other private company to operate within the said areas without authorization from the legally awarded concessionaires (by a signed agreement or subcontract). Nabugabo updeal joint venture has the exclusive rights to operate (collect and transport) within zone 7".

The above directives by the Respondents are repeated in all other notices to Kampala residents in Nakawa, Luzira Parish, Kisaasi, Kyanja, Banda, Bugolobi, Mutungo, Naguru, Butabika, Kyambogo etc. all these are intended to conscript the residents into one solid waste system against their will or consent. Pursuant to section 23 of the ordinance, residents have a right to deal with a solid waste

collector of their choice. Refer to paragraph 7 of the Affidavit in Rejoinder and annexure BINV1, BINV2, BINV3 and BINV4.

Further the 1st Respondent has continued to impound the Applicant's trucks operating within Kampala despite the court orders dated 12th July, 2018. The 1st Respondent has done this to enable only the 3 players to operate against the wishes of some residents that have no problem contracting with the Applicant Company. It has greatly hindered its' operations and affected services delivery. This can be evidenced from the various letters requesting for release of impound trucks and Release Orders from the 1st Respondent. Refer to paragraph 15 and annexure BINM, BINN, BINO, BINP, BINQ, BINR, and BINS.

The Applicant's counsel submitted that the first clear and unambiguous position of the law is that as long as a court order is not discharged, it is valid and since it is valid, it must be obeyed. That being the case, the only way the Respondents can obtain reprieve from the obeying the court order that was issued is through applying for a stay or setting it aside by an Appeal or Review by a court of law. Refer to *Ramnicklal Ranchihoddas versus Attorney General & 6 others M.A No. 1053 of 2015, page 10*. As long as the court order is not discharged, then a party that elects to disobey it does so at the risk and pain of committing contempt of court. In the instant facts, the order issued by this court has never been set aside or stayed by competent court thus whatever the Respondents are purporting to do is contempt.

It is also trite law that a court order is a court order. A party, who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it. It would be dangerous to hold such suitors or their solicitors, could judge themselves whether the order is null or valid, regular or irregular. They should not come to court and take it upon themselves to determine such questions. Such a person should apply to court to discharge that order but before its discharge it must be obeyed. Refer to the book by Musa Ssekaana & S. Ssekaana, *Civil Procedure and Practice in Uganda*, 2nd Edition by, page 37. Such behaviour is

purely wanton disobedience and adamant refusal to obey court orders and ought to be sanctioned by court. It's therefore Applicant's contention that the continued conscription of Kampala residents into the Respondents' solid waste system, continued impounding of its truck, harassment of its customers and failure to authorise the Applicant to carry out its business within the city amounted to contempt of court.

Respondents' counsel opposed the present application as contained in the affidavit in reply of Dr. Okello Daniel Ayen paragraphs 3 to 14 and they are that Kampala Capital City Authority is responsible for collecting, transporting and disposing waste from Kampala Capital City. It has legal mandate to regulate or license the depositing on any street, public place or unoccupied land of any refuse and / or rubbish. Accordingly, the responsibility to collect and dispose of solid waste in Kampala is by the Kampala Capital City Authority / its agents, servants or licensed collectors.

Kampala capital City Authority in a bid to carry its function and in order to improve solid waste management services in Kampala City, advertised a request for prequalification in respect for prequalification in respect of engaging the private sector in the management of solid waste in the city of Kampala among others and the Applicant submitted its offers in response to the invitation to bid contained in the bidding documents and it was unsuccessful.

The Applicant filed Misc. Application No.117 of 2016 against the Kampala Capital City Authority, Kampala Solid Waste Management Consortium Ltd and Homeklin Ltd and Court rendered a decision among others that residents who did not wish to use the 1st Respondent's Solid waste collection system are legally allowed to contract with authorized private collectors for solid waste collection services in the City of Kampala though, it is engaged in the said business of garbage collection and transportation.

The Applicant alleges that the Respondents have disobeyed the said Court Orders and has now filed the instant application against the Respondents seeking

for Orders of this Honourable Court on the 20th day of June 2018, further that the Respondents be ordered to pay compensation in the sum of UGX.1,500,000,000 to the Applicant as aggravated and exemplary damages for being in contempt of Court Orders and costs of the application as well.

The Applicant is carrying on the business of collection, transportation, removal or disposal of refuse in the City of Kampala in the absence of a permit from the 1st Respondent. It is not true that the applicant has applied for a permit and the 1st Respondent has refused to receive the said application as alleged. The applicant has never applied for a permit to the 1st Respondent's Directorate of Public Health as alleged to engage in the business of Kampala and it has not attached to the present applicant any documentary proof to show that it has ever applied for a trade license to the 1st Respondent's Directorate of Revenue Collection to engage in the business of Kampala.

There is no evidence to show that the Applicant applied for a permit to the 1st Respondent's Directorate of Public Health and Environment to collect and transport garbage. The applicant has never applied for the permit to engage in garbage collection business showing that it is willing and able to meet the generally applicable and rational licensing requirements contrary to the Orders of this Court in its decision of 20th June 2018. The applicant is therefore not one of the authorized private collectors for solid waste collection services in Kampala.

Respondent's counsel further submitted that it is the applicant who is in contempt of Court Order. By virtue of section 7 (2) of the Kampala Capital City Act, 2010, the Kampala Capital City Authority as specified in parts A, B and C of the Third Schedule is responsible for collecting, transporting and disposing waste from Kampala Capital City. In the same Act, paragraph 3 (b) of part A of the Third Schedule allows Kampala Capital City Authority to among other things regulate or license the depositing on any street, public place or unoccupied land of any refuse, rubbish etc.

Section 85(2) of the Kampala Capital City Act provides that any ordinance, bye-law or any other instrument made by the Kampala City CouncilShall, after the commencement of this Act, continue in force until revoked by the authority or other corresponding entity under the Authority. The Authority thereby was allowed to adopt and apply the provisions of the Kampala City Council (solid waste management) Ordinance, 2000. By the preamble of the said Ordinance, it was made to provide for the control, storage, collection, transportation, treatment, processing and disposal of solid waste within Kampala City.

Counsel for the Respondent submitted that section 17 of the Kampala City Council (solid waste management) ordinance, 2000 puts the responsibility to collect and dispose of solid waste in Kampala District by the Council either by its agents, servants or licensed collectors. The applicant is not one of the licensed garbage collectors. The applicant has contrary to the order of this court date 20th June 2018 and the subject of the present application engaged in the business of garbage collection without a permit issued under section 40 of the Kampala City Council (solid waste management) ordinance, 2000 and accordingly, Kampala Capital City Authority has on various dates impounded the applicant's trucks.

There is no evidence by the applicant that it has applied for and obtained a permit from the National Environment Management Authority as provided under section 23 of the Kampala City Council (solid waste management) ordinance, 2000. The above legal requirements were considered by this Honourable court in the case of PAUL NDUHURA T/A BINS KAMPALA VS. KAMPALA CAPITAL CITY AUTHORITY & 2 OTHERS COMMERCIAL COURT HIGH COURT CIVIL SUIT NO. 297 OF 2016.

The actions of the applicant in that regard are in contempt of the said court order of this court. Court made it clear that the applicant was not a licensed to engage in the business of garbage collection and transportation in Kampala. The applicant has still not applied for and obtained a permit from Kampala Capital

City Authority through the Directorate of Public Health and Environment. The aforesaid actions of the applicant constitute an illegality and the same is criminal.

The Respondents so submit because according to section 20 (e) of the Kampala City Council (solid waste management) ordinance, 2000, collection, transportation, removal or disposal of refuse without a valid permit from the council constitutes an offence. It is submitted for the Respondents that the applicant without a permit is engaging in the business of garbage collection in Kampala. Accordingly, we thus submit that the present application is premised on an illegality. We also submit that the applicant has not come to Court with clean hands in bringing the present application. This was held in the case of KASAJJA ROBERT VS. NASSER IGA & ANOR MISC. CAUSE NO. 004 OF 2014.

Respondent's counsel submitted that the actions of the applicant in engaging in the business of garbage collection and transportation in Kampala without first applying for and obtaining a permit constitute an offence and it is illegal. The applicant not being an authorized agent or private garbage collector by Kampala Capital City Authority has no legal basis to engage in the business of garbage collection. There is no court order allowing the applicant to engage in the said business without applying for and obtaining a permit. The present application is therefore brought in bad faith. By the court orders of 20th June 2018, the applicant is required to first apply for and obtain a permit before engaging in the business of garbage collection and transportation in Kampala.

We submit that the actions of the applicant in engaging in the business of garbage collection and transportation is against the spirit of the said court order and contrary to the said court orders of 20th June 2018. To the contrary, it is the applicant in contempt of the said orders of this court. The applicant has not come to court with clean hands and it is engaging in Kampala city without a permit from the 1st respondent's Directorate of public Health & Environment.

DETERMINATION

According to the Black's Law Dictionary 11th Edition at Page 397 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 behaviour or insolent language, in its precincts or so near thereto as to disturb the proceedings or to impair respect due to such a body.

Civil contempt means the failure to obey a court order that was issued for another party's benefit. It is therefore a coercive or remedial in nature.

Contempt of Court is such a serious matter that it is the only one exempted from the constitutional requirements and offences and penalties being defined and prescribed under **Article 28(12)** of the 1995 Constitution of the Republic of Uganda.

Failure to comply with a mandatory or prohibiting order or injunction, or an undertaking given to the court, is punishable as contempt of court. However, in a case where a public authority fails to comply with a court in judicial review, a mere finding of contempt rather than a penalty may suffice to mark the gravity of the situation. See *M v Home Office [1994] 1 A.C 377*

In *Hon. Sitenda Sebalu vs Secretary General of the East African Community EACJ Reference No. 8 of 2012*, the ingredients of Contempt of Court were laid out to include the existence of a lawful order, the potential contemnor's knowledge of the order, the potential contemnor's ability to comply and the potential contemnor's failure to comply with/disobedience of the order.

Furthermore in *Housing Finance Bank Ltd & another vs Edward Musisi Misc. App. No. 158 of 2010* court held that;

"the principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders issued by Court through the set judicial process, in the normal functioning of the Courts are not complied with in full by those targeted and/or called upon to give due compliance. A party who knows of an order, regardless of whether, in the view of that party, the order is null or valid, regular or irregular,

cannot be permitted to disobey it, 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 an order. The order must be complied with in totality, in all circumstance by the party concerned, it is the responsibility and duty of the party concerned, in case that party for some genuine reason, finds compliance with the Court Order not possible, to appropriately move the court issuing the order and bring to the attention of that Court the reasons for non-compliance. This is to ensure that the Court issuing the order not only must not be held in contempt, but must not, whatever the circumstances, appear to be held in contempt by any litigant."

This court made lawful orders of Court on 20th/06/2018 in ***Miscellaneous Application No. 117 of 2016: Bin IT Services Limited versus Kampala Capital City Authority & 2 Others***, the said court orders were made in the presence of the Applicant's counsel and the Respondents' counsel, Mr. Dennis Byaruhanga Kampala Capital City Authority failed to comply with the orders an aspect that amounts to contempt of court.

The arguments put forward by the respondent are an afterthought in the court's view. They have failed to comply with the order of court and now are arguing before this court that the applicant has no permit to collect garbage from NEMA. They have not adduced any evidence to that effect and it is quite clear that before they created their own monopolies of the different companies to collect garbage from KCCA divisions, the applicant was among the registered and permitted garbage collectors within the city and the argument of lack of permit is baseless and devoid of any merit. They have never written to the applicant giving the said reason before coming to court.

The respondent's deponent during cross examination failed to convince this court that they are not in contempt rather it appears they have opted to create business monopolies in the garbage collection in the city for personal gains in total abuse of authority. The arguments put forward in court by the said Okello pointed towards comfort of the respondents favouring specific companies to deal with in garbage collection rather allowing other private

collectors on the market to break their illegal business monopolies created for personal gain or interest.

There is no basis to create exclusive rights to collect garbage to the detriment of other private actors who have always been in the same business but for reasons beyond their control have not been given concessionaire agreements.

They should be at liberty to continue operating as private actors and any other resident of the city who is not satisfied with the service of those KCCA has contracted should be free to contract other private contractor. The exclusive rights created by KCCA and its concessionaires amounts to conscripting all the resident of Kampala into their contract and yet any resident who pays for garbage collection should be at liberty to contract a garbage collector of his or her choice.

Corruption distorts the administrative process of decision making as administrative decisions cease to be objective and merit based but subjective and motivated. All irrelevant considerations come into play in decision making. Decisions are not made on the merits of the case but on irrelevant grounds. Corruption results in dishonest abuse of power or position by public official. It affects impartial exercise of public power. The decision-makers lean towards those who grease their palms. This is the anti-thesis of Rule of law and good governance.

Corruption not only corrodes the moral fibre of society but is also harmful to national economy and national interest. Corruption weakens national economy and stifles national growth. Corruption is an abuse of public resources for private gain. Corruption undermines two of the basic principles on which democratic systems are based, viz., the equality of citizen's rights and transparency of decision making.

The action of the KCCA officials in the whole garbage collection seems to be tainted with corrupt practices and abuse of authority and the same should be thoroughly investigated by Inspectorate of Government. They are continuing

to cause financial loss to the Authority through illegal actions for which they should be held personally responsible.

This court is satisfied that there is a wilful and *malafide* non-compliance with court orders directing the 1st respondent to issue the allow the private collectors like the applicant to be issued with trading licence in Miscellaneous Application 117 of 2016.

Therefore I find this issue in the affirmative.

ISSUE 2:

What are the remedies available to the Applicant?

Counsel for the applicant submitted that the Court under section 98 of the CPA Cap 71 confers upon the court inherent powers to make such orders as may be necessary, including those sought by the Applicants in their Application/Notice of Motion, for the ends of justice to meet or to prevent abuse of court process.

a) Aggravated and Exemplary damages of UGX. 1,500,000,000/=

Applicant counsel submitted that the courts have overtime differentiated between aggravated and exemplary damages. Lady justice Flavia Senoga Anglin in *Semanda Davis & 2 others versus Kaheebwa Geoffrey & Another* M.A. No. 1625 of 2016, at page 6 draws a distinction between the two remedies. She states that;

“Aggravated damages are by their nature intended to compensate the plaintiff (Applicant) whereas exemplary damages are by their nature, intended to punish the defendant”

Also, M. Ssekaana & S. Ssekaana in *Civil Procedure and Practice in Uganda*, 2nd Edition at page 173, state that a claim for exemplary damages may be awarded where there has been oppressive, arbitrary or unconstitutional action of servants

of government. Exemplary damages in this case would be justified to punish the Respondents for the blatant disobedience of the court order. The Applicant Company's business operations in Kampala have greatly been affected by the Respondents' non-compliance with the court order. Its customers have been threatened by the Respondent to only deal with 3 concessionaire companies. The company's trucks have always been impounded and lost so many customers in the long run. As a result of all this, it has lost and continues to lose a lot of money both through company retainers with the customers and fees spent in reclaiming the impounded trucks e.g. breakdown services.

As evidenced in paragraph 16 annexure BINV of the Affidavit in Support, between the June 2018 up to 15th August, 2019, when this Application was filed, the Applicant lost about 179 customers and Ugx 81,754,973/=. Annexure BINV shows a summary of the lost customers and income due to the violation of the court order while the subsequent pages specifically indicate the names, area, contacts and monthly charges of the lost customers. Further, the Applicant lost around Ugx. 7,200,000/= as a result of money spent on its impounded trucks. The money includes breakdown charges, money spent on hiring alternative trucks to serve customers and the days lost while trying to secure the said trucks from the Respondent. The trucks were UAU 190B, UAU 925T, UBA 991N, UAL 623U and UAU 190B. refer to summary of income under paragraph 16 annexure BINV of the Affidavit in Support and annexure BINU. Annexure BINT shows the different receipts of money spent by the Applicant Company on hiring alternative trucks to serve customers depending on the number of days.

Respondent's counsel submitted in regards to the remedies available, in the circumstances of this case since the applicant has disobeyed the court order of 20th June 218, it is engaged in an illegality and has come to court with no clean hands, the applicant is not entitled to the remedies prayed for in the present application. As regards the remedies of aggravated and exemplary damages of UGX. 1,500,000,000.

As correctly submitted by the applicant, aggravated damages are by their nature intended to compensate the injured party and exemplary damages awarded where there have been oppressive, arbitrary or unconstitutional actions. See SEMANDA DAVID & 2 OTHERS VS. KAHEEBWA GEOFREY & ANOR MISC. APPLICATION NO. 1625 OF 2016. The applicant in the present case is in contempt of the said Court Order requiring it to first apply and obtain a permit from the 1st Respondent for garbage collection before engaging in the said business and there is no court order of a competent court allowing the applicant to engage in the business of collecting and transporting garbage in Kampala City without a permit. The court order of 20th June 2018 directed the applicant to first apply for and obtain a permit before engaging in the business of collection and transportation of garbage in Kampala City which the applicant has disobeyed.

In the premises, we submit that the present application is premised on an illegality. In the premises and basing on the decision in MAKULA INTERNATIONAL LTD VS. HIS EMINENCE CARDINAL NSUBUGA AND ANOTHER (1982) HCB 11 wherein Court held that *“a court of law cannot sanction what is illegal and illegality once brought to the attention of the court, overrides all questions of pleading, including any admissions made thereon”*, it is our humble prayer that this application be dismissed.

The applicant has failed to adduce facts and evidence to show that it applied for a permit to the 1st Respondent and was unlawfully and wrongfully denied the same. No application to the 1st Respondent’s Directorate of public Health for a permit to engage in garbage collection business is attached to the present application. We thus submit that the application is premature, brought in bad faith and premised on an illegality. Having failed to prove its case, the applicant is also not entitled to the fine as prayed in the submissions.

DETERMINATION

While non-compliance with court orders has unfortunately become a commonplace, particularly in certain government departments or agencies, this is not

necessarily the result of wilful and *malafide* non-compliance. It is symptomatic of systemic break down in the administration, or simply of incompetence or corruption on the part of public officials. It then becomes deliberate and intentional on their part to refuse to respect court orders due to abuse of authority for personal gains or to show authority.

This sad reality of administrators refusing to comply with court orders must be checked and stopped in order to uphold the rule of law. The courts have evoked their inherent powers in ensuring compliance with their orders by way of contempt against the non-compliance by administrators or public servants.

Courts in Uganda have established that *“Uganda have no equivalent of the Contempt of Court Act”*, but have reiterated that *“disobedience of civil court orders is known and ought not to be allowed by courts....”* See **Stanbic Bank (U) Ltd and Another vs. Commissioner General URA Miscellaneous Application 0042/2010**.

It is an established general principle of law that *“a party who knows of an order... cannot be permitted to disobey it As long as the order exists, it must not be disobeyed.”*

“Civil contempt is punishable by way of committal or by way of sequestration. Sequestration being the act of placing, for a temporary period of time, the property of the contemnor into hands of sequestrators who manage the property and receive rent, and profits. Civil contempt may also be punished by a fine, or an injunction granted against the contemnor” – Halsburys Laws of England vol. 9 (1) paragraph 492 – cited in the **Stanbic Bank Case (Supra)**

It has been established by decisions in other jurisdictions that imprisonment for civil contempt is properly ordered *“where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance was mandatory in character* – See the case or in **Re Contempt of Dougherty 429, Michigan 81, 97, (1987)**.

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 process is civil, and he 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 him to act in accordance with the order of court.

However, having found no similar cases in Uganda where contemnors have been committed, but bearing in mind the provision of S. 14 (2) (c) of the Judicature Act, Court proceeds to exercise its discretion in conformity with the principles of justice, equity and good conscience, and instead of committal of the Executive Director of the Kampala Capital City Authority, order a suspended sentence of six months if the acts that were forbidden by the earlier order persist.

The proceedings before court now are intended to punish the Respondent for ignoring the orders in Misc. Cause No. 117 of 2016 and continuing with the conduct which was earlier complained of. In the circumstances, this court finds that the Applicant is entitled to exemplary damages as a way of punishing the Respondent for the continued disobedience of the court order. This would be further compensation for the continued inconvenience caused to the Applicant.

Counsel for the Applicant applied for the award of shs. 1,500,000,000/-, but court finds this figure to be excessive. The figure of shs. 150,000,000/- is awarded instead, to indemnify the Applicant, together with interest at court rate from date of this ruling till payment in full, in addition to other penalties to be imposed against Respondent.

The application is allowed for all the reasons set out herein and the following orders are made:-

- 1) A suspended sentence of six months committal is to be meted out to the Executive Director of the 2nd Respondent, if the acts that were forbidden by court in **Miscellaneous Application No. 117 of 2016: Bin IT Services Limited versus Kampala Capital City Authority & 2 Others** persist.
- 2) Exemplary damages of shs. 150,000,000/- are awarded to the Applicant Company with payment of interest at court rate from date of this ruling till payment in full.

- 3) The sum of shs. 20,000,000/- is awarded against the Respondent as a penalty for contempt of court orders in **Miscellaneous Application No. 117 of 2016: Bin IT Services Limited versus Kampala Capital City Authority & 2 Others**. The sum is to be deposited in court.
- 4) The 1st respondent's officials directly responsible shall pay to the applicant a further sum of 25,000,000/= per month for any further contempt of the court order after this ruling.
- 5) The Deputy Registrar of this court is directed to bring this ruling to the attention of the Inspectorate of Government and other concerned offices.
- 6) Taxed costs of the application are also granted to the Applicant.

I so order

SSEKAANA MUSA

JUDGE

14th April 2020