

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
Miscellaneous Application No. 671 of 2019
[Arising from Miscellaneous Cause No. 203 of 2019]**

JACK ERASMUS NSANGIRANABO:..... APPLICANT

VERSUS

- 1. COL. KAKA BAGYENDA-THE DIRECTOR GENERAL
INTERNAL SECURITY ORGANISATION.**
- 2. ATTORNEY GENERAL OF UGANDA:..... RESPONDENTS**

**BEFORE: HON. JUSTICE SSEKAANA MUSA
RULING**

The Applicant filed an application for contempt of court orders by the respondent issued vide Misc. cause No. 203 of 2019 brought under Article 28 [3] of the Constitution, The Civil Procedure Act and its rules, Section 33 of the Judicature Act and under objective VII And IX of the National Objectives and Directive Principles of state policy seeking for a declaration that the Internal Security Organization is made to be in contempt of court for refusing , ignoring and failing to implement the order of this Honorable court contained in the ruling of the 31st day of July, 2019 in Misc. cause No 203 of 2019 directing them to release the Applicant from illegal detention.

The Application was heard and disposed of inter-party in favor of the Applicant wherein court issued a writ of habeas corpus ad subiciendum, under rule 6 of the Judicature [Habeas Corpus] Rules for the Applicant to be released forthwith from detention.

The orders above were to be complied with by the Director General of Internal Security Organisation and Attorney General of Uganda who are the respondents' immediately from 31st day of July 2019, the date of the

ruling. However, the said orders were not complied with hence this Application.

In support of the Application, the Applicant filed an affidavit in support of the Application dated 4th day of June, 2020 which was sworn by HOPE KAMPAIRE. The 2nd Respondent filed an affidavit in reply dated 15th day of March 2020 sworn by OBURU ODOI JIMMY.

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

The applicant was represented by *MR. EDGAR TABARO* whereas the 2nd respondent was represented by *Mr. Ojambo Bichachi* Attorney General's Chambers of the Republic of Uganda, the 1st respondent was not represented and neither did he file any documents on court record.

ISSUES

- 1. Whether the Respondents are in Contempt of Court orders issued Vide Misc. No .203 of 2019.***
- 2. What Remedies are available to the Applicant?***

RESOLUTION.

Whether the Respondents are in contempt of Court orders issued vide Misc. No. 203 of 2019.

The applicant's counsel cited the case of *Uganda Super League v Attorney General Constitutional Application No.73 of 2013* wherein Justice *Kiryabwire* citing the Black's law Dictionary 7th Edition that defines Contempt of courts as;

"Conduct that defies the Authority or dignity of court." He went on further to cite with Approval Halsbury's laws of England [Volume 9, 4th Edition] wherein Contempt of court was classified in two categories; *Criminal contempt which is committed by words or acts that impede Administration of*

justice and Civil Contempt which arises when there is disobedience to judgment, orders or other court process and involves private jury."

Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice, is contempt of court. The rationale is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

This is because the public has an interest and a vital stake in the effective and orderly administration of justice. The Court has the duty of protecting the interest of the public in the due administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for the protection of the public interest in the proper administration of justice, as Lord Atkin observed in *Andre Paul Terence Ambar Appeal No. 46 of 1935 v. The Attorney General of Trinidad and Tobago (Trinidad and Tobago) [1936] 1 All ER 704, [1936] AC 322;*

Every judicial officer presiding over court proceedings has the power to punish for contempt.

However, for contempt that is not committed in the face of the court, this kind of contempt is *sui generis*. It is usually initiated by a litigant who by motion brings to the attention of court, conduct believed to be in contempt of court. All contempt proceedings are matters between the court and the alleged contemnor.

Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he or she may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor.

However, since, the contempt proceedings are not in the nature of criminal proceedings, it is open to the Court to cross-examine the contemnor and even if the contemnor is found to be guilty of contempt, the Court may accept apology and discharge the contemnor. This peculiar feature distinguishes contempt proceedings from criminal proceedings.

In line of the instant case, the 1st respondent who is one of the contemnors made no appearance in court and neither did he file any document in court to rebut the allegation despite being served as stated in the affidavit HOPE KAMPAIRE under paragraph 4.

There is a clear line of distinction between proceedings for contempt initiated by the Court on its own motion, and those initiated as civil contempt by the motion of a private litigant.

A proceeding for civil contempt is regarded as a form of execution and enforcement of the order alleged to have been violated to the detriment of a private party. It is in the nature and form of appeal for execution or enforcement of the court's order, for the benefit of a party. The right of a private party to move the court for civil contempt is therefore regarded as remedial. Such proceedings are thus governed by the limits of the civil jurisdiction of court.

Position of the law.

Section 98 of the CPA gives the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law (see Article 139 (1) of *The Constitution of the Republic of Uganda, 1995*).

The position of the law is that for contempt of court to be found, the following principles have to be established: -

- Existence of a lawful order.
- Potential contemnor's knowledge of the order.

- Potential contemnor's failure to comply, that is, disobedience of the order.

Analysis

Existence of a lawful order.

Evidence was led to show that a court order vide Misc. cause No. 203 of 2019 was granted on the 31st day of July 2019 in the presence of Mr. Edgar Tabaro holding the brief for Mr. Chan Geoffrey Masereka counsel for the Applicant and Mr. Ojambo Bichachi, State Attorney, for the 2nd respondent. The order was extracted by the Applicant and served on the respondents.

It's noted with clarity that it is not in dispute by both parties that this Honorable Court issued on the 29th day of July 2019 in Miscellaneous Cause No: 203 Of 2019 (Jack Erasmus Nsangiranabo vs the Director General Internal Security Organization & The Attorney General of Uganda) an order for the release from detention of Jack Erasmus Nsangiranabo under Rule 6 of The Judicature (Habeas Corpus) Rules ordering the first respondent to release the applicant forthwith from illegal detention. It is therefore factual that there is existence of a lawful order.

Potential contemnor's knowledge of the order.

The general principle is that a person cannot be held in contempt without knowledge of the court order. A party who knows of an order regardless of whether, in 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 order. The order must be complied with in totality.

Learned counsel of the Applicant led evidence to show that the respondents were fully aware of the orders issued by this Honorable court in Misc. Cause No. 203 of 2019 and personally acknowledged receipt of the said order as evidenced from paragraph 4 of the affidavit in support of the application of HOPE KAMPAIRE wherein the deponent stated that the said order was extracted on the 31st day of July ,2019 and served upon the

respondents on the 1st day of August 2019 who acknowledged receipt by stamping and signing on the copies so delivered and served.

Therefore, in light of the above, the respondents being parties and at all time present when court order was issued vide Misc. cause No. 203 of 2019 from which the said order arose. This makes the respondents fully aware of the said orders made therein.

Potential contemnor's failure to comply, that is, disobedience of the order.

It's on record as stated on the Applicant's affidavit in support of the Application paragraph 5 and 6 wherein the deponent stated that upon service of the said order on to the respondents, Applicant through their lawyers wrote to the 2nd respondent requesting them to prevail over the 1st respondent in compliance with the court order. To the Applicant's dismay, the order was deliberately ignored yet service was done in persona and the respondents were parties to suit.

However, the 2nd respondent refutes liability but agrees that on the 15th day of November 2019, the chambers of the Attorney General of the Republic of Uganda were served with an application for contempt of Court Orders in respect of the release Order in Miscellaneous Cause No: 203 of 2019 wherein the chambers of the Attorney General of the Republic of Uganda wrote to the office of the Director General Internal Security Organization on 2nd December 2019 about the contempt proceedings and sought instructions on how to handle the same.

No response was given by the Director of General Internal Security Organization, the chambers of the Attorney General of the Republic of Uganda again wrote to the office of the Director General, Internal Security Organization on 9th December 2019 still seeking instructions on how to handle the same. No response was made.

The Chambers of the Attorney General therefore prayed to be purged off liability for having taken due steps to enforce the court order but 1st Respondent neglected to comply.

In consideration of the above, I find that the chambers of the Attorney General executed her mandate and duty as far as it regards to enforcing the said Court Orders and is therefore purged of any alleged contempt of Court Orders in that respect.

Conclusively a court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case.

I find that the 1st respondents 'non-compliance with the orders of court amounted to contempt.

What Remedies are available to the Applicant?

The Applicant prayed to court seeking a number of remedies as a result of the 1st Respondent's conduct towards him.

The Applicant sought a declaration that the 1st Respondent be held in contempt of court for refusing, ignoring and failing to implement the order of this Honourable Court contained in the ruling of the 31st day of July, 2019 in Misc. cause No. 203 of 2019 directing them to release the Applicant from illegal detention.

A declaration that the 1st Respondent be held responsible as a public officer having failed, refused and ignored to comply with the orders of this honourable court, is not fit to hold a public office established by law.

The 1st Respondent to be committed to civil prison for disobeying the lawful orders of this Honourable Court.

The applicant be awarded UGX500,000,000/= (Five hundred million shillings only) in punitive, exemplary, aggravated and general damages.

Decided cases indicate that examples of punishments for Civil contempt are derived from the common law decisions, where the punishments are provided for in the contempt of court Act (1981). It has been established that Uganda has no equivalent of the contempt of court Act however courts have made it clear that disobedience of civil orders is known and ought not to be allowed by courts.

The court having found the 1st Respondent to be in contempt of court, there is no justifiable excuse for the Respondent to have continuously disobeyed the court order even after he was written to more than once by the 2nd respondent and acknowledged the same, what is therefore left for court is to determine the remedies available.

Disregard of an order of the court is a matter of sufficient gravity whatever the order maybe as reiterated in *Stanbic Bank (u) Ltd Vs. Commission General Uganda Revenue Authority* and that Court of law never acts in vain and as such, issues touching on contempt takes precedence over any other case of invocation of the Jurisdiction of Court.

The High Court is enjoined to exercise its Jurisdiction in conformity with the common law and doctrines of Equity where by its obliged to exercise its discretion in conformity with principles of Justice, equity and good conscience respectively. *See sec.14(2) (b) (1) and 14(2) (c) of the Judicature Act.*

Civil contempt is punishable by way of committal to civil prison or by way of Sequestration. It can also be punishable by way of fine or an injunction against the contemnor. *See Stanbic Bank (U) Ltd Vs Commission General Uganda Revenue Authority (supra).*

According to the case of *Re Contempt of Dougherty 429, Michigan 81, 97 (1987)*, Imprisonment for civil contempt is properly ordered where the defendant has refused to do an act affirmative act by the provisions of an order which either in form or substance was mandatory in character.

Further that 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 rather to compel the contemnor to act in accordance with the order of the court.

This court has already found in the present case the 1st Respondent refused to obey the orders of court to release the Applicant from detention, the orders were mandatory in character and would have been for the benefit of the Applicant.

In the circumstances of this case, the orders sought for imprisonment by way of committal to civil prison would not suffice since the applicant is no longer the office holder.

However, this court issues a declaratory order that the actions of the 1st respondent in refusing to produce the applicant before the court and later refusing to release the applicant was contemptuous and an abuse of authority.

As regards to compensation, the Applicant has proved no actual loss that he has suffered. Nevertheless, the 1st Respondent's high-handed behaviour through his contempt of court would have called for punitive damages.

In the instant case, I find that the continuous illegal detention of the Applicant by the 1st Respondent was unconstitutional, oppressive with an intentional move to cause mental suffering. The applicant is at liberty to file a suit for violation of his rights or wrongful/illegal detention so that a competent court can assess the appropriate damages premised on factual evidence rather than the assumed facts.

The peculiar circumstances surrounding this case do not warrant issuance of any order as to damages since the applicant is or was in employment of Internal Security Organisation. Currently, the person who defied the court

order was sacked from the same position; it would be fair that this issue is put to rest.

The application is allowed but I make no order as to costs

I so order.

SSEKAANA MUSA

JUDGE

19th/04/2021