

3. The respondents each pay into court with UGX 300,000,000 as a fine for contempt of court orders.
4. Each of the respondents pay UGX 10,000,000 on the applicant as general damages to atone for the injury and inconveniences accessioned to him.
5. Each of the respondents pay to the applicant UGX 200,000,000 as exemplary and/or punitive damages for the contempt of court orders and acting in brazen, unaccountable and injudicious manner as public officers or bodies in disrespecting court orders thereby abusing the applicants right and freedom.
6. Interest at court rate on all court awards from the time of award till full payment.
7. Costs of this application be provided for.

The grounds for this application are contained in the affidavit of the applicant but briefly they are:

1. This honorable court on 14th April 2020 made a ruling and orders which among others quashed the decision on the first and second respondents of 30th septmber,2019, ordered the first respondent and its officers to appraise the applicant and consider his reinstatement or renewal of his contract of employment basing on the affirmative appraisals but the respondents have not implemented it and they are in contempt.
2. The respondents acting jointly and/or severally, did not put in place and have not disclosed to the applicant beforehand the 'alterative appraisals' to evaluate the applicant and consider his reinstatement or renewal of his contract of employment contrary to the court orders.
3. The applicant does not know the nature, model of character of the alternative appraisals process put in place for the sake of justice.
4. The 2nd respondent, the managing director, is at the center of the respondent's purported alternative appraisals process yet he unilaterally authored the impugned letter of 30th September, 2019 which was quashed by court and was

found by court to have acted with mala fides, illogically; was involved in improper exercise of power for his selfish interest and abuse of discretion.

5. The respondents jointly and severally, not being cognizant of the dual positions that the applicant held, one statutory (secretary to the board) and the other, non-statutory (director corporate services) and wanting to carry out the purported alternative appraisals with the two dockets combined.
6. The first and second respondents not allowing and/or letting the first respondent' statutory bodies and the subcommittees to provide and be substitute and different centres of "alterative appraisals" for evaluating the applicant as ordered by court.
7. The 2nd and 3rd respondents with the aid, condonation, sanction and approval of the 1st respondent taking advantage of the restrictions to business operations, public movement and transport due to covid-19 pandemic in Uganda and globally to summon the applicant during the period of lockdown or quarantine to oblige and comply with their purported "alterative appraisals" contrary to natural justice.
8. The respondents not affording the applicant access to resource within the precincts of the 1st respondent to prepare the refresh his mind in preparation for the purported "alterative appraisals".
9. The 1st, 2nd, and 3rd respondents commencing and going with the process of restructuring and recognizing the 1st respondent as evidenced by the "Best Evaluation Bidder Notice" of 22nd may, 2020 in which M/S ABS consulting Group was chosen to do organize, do job evaluation and grading, salary review and pay structuring.
10. The respondent's communicating by letter dated 5th June, 2020 that by the applicant 'not showing up' in the respondent's meetings, purportedly convened in an attempt to meet "alterative appraisals" process, 'is probably an expression of' the applicant's consent to the 1st respondent's Board discharging its obligations under the court order and the "alterative appraisals" is completed.

11. In the interest of justice, the respondent's conduct post the court ruling and orders be declared contemptuous and that they be punished and made to atone for the contempt as proposed.
12. The court orders stand to be abused and disrespected further by the respondents unless the latter restrained and punished as proposed.
13. The applicant has suffered and been inconvenienced due to the disrespect to the law by the respondents who are public officers and/or bodies and he continues to seek justice by coming to court despite the fact that the matter was disposed of by court.
14. The prevailing contempt of court encouraging impunity, there is need for restraint and to prevent court orders being issued in vain.

The parties were ordered to file written submissions; the parties accordingly filed the same.

The applicant was represented by *Mr. Mukasa Mulema* and the respondents were represented by Mr. Alex Rezida for the 3rd respondent, *Mr. Adubango Richard* for the 1st and 2nd respondents

Issues

- 1. Whether the respondents are in contempt of court**
- 2. What remedies are available?**

On issue one, counsel for the applicant submitted that the law under which this application is brought is well set out on the rubric of the Notice of Motion; that is the inherent power of this court in section 33 of the Judicature Act, Cap 13, section 98 Civil Procedure Act, Cap 71, section 64 (c)(e) Civil Procedure Act on supplemental proceedings and the enabling rules in order 52, rules 1 and 3 Civil Procedure Rules SI 71-1

Counsel cited Article 128(2), (3) of the Constitution of Uganda which provides thus:

- (1) *"No person or authority shall interfere with courts or judicial officers in the exercise of their judicial functions.*
- (2) *All organs and agencies of the state shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts".*

Counsel further cited Article 21 (1) of the same grand nom which states:

“All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law”.

He submitted that the forgoing stress the equality of all persons before and under the law, and when the law is interpreted and decisions are made in interpretation of that by law by the judiciary/court, all such persons must obey and do as the decisions of court command. It is part of the rule of law percepts of constitutionalism and democracy.

Counsel cited the authority of **Hon. Sitenda Sebalu vs. The Secretary General Of The East African Community (Reference No. 8 of 2012)** where the regional court after upholding that in contempt of court proceedings a court invokes its inherent powers to deal with such situations when called upon, went ahead to quote **Halsbury’s laws of England (4th edition paragraphs 284, 458)** stating:

“It is civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act”.

Counsel further submitted that according to case law, it is plain and unqualified obligation of every person against or in respect of whom an order is made by a court of contempt jurisdiction to obey it unless and until it is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”.

He submitted that the learned justices of the regional court further emphasized this latter point thus:

“It follows from the above authorities that the position of the law is clear, as long as the court orders not discharged, they are valid and since they are valid, they should be obeyed. That being the case, the only way in which a litigant can obtain reprieve from obeying court order before its discharge is by applying for and obtaining a stay. As long as the order is not stayed, and is not yet discharged, then a litigant who elects to disobey it does so at the risk and pain of committing contempt of court”.

Counsel submitted that it is common cause in the instant case that the respondents chose not to appeal the decision of court of 14th April, 2019 and neither did they seek to stay the execution/implementation of the decision/orders. Therefore the orders of court are not yet discharged.

Counsel cited the **Sitenda Sebalu case** (supra) which highlights the elements of contempt of court: they are;

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

Counsel submitted that in the same judgment the court expressly held that the standard of proof in contempt proceedings must be higher than proof of probabilities and almost but not exactly beyond reasonable doubt.

Counsel further cited the authority of **Prof. Frederick Sempebwa and others Vs. A.G Civil Application No.5 of 2019**, while relying on the persuasive authority from the supreme court of **S. Africa of Fackie Vs. CC 11 systems (pty) Ltd [2006] SCA 54 (RSA)** where court stated that;

- “(b) The respondent in such proceedings is not an accused person but is entitled to analogous protection as are appropriate to motion proceedings”
- (c) In particular, the applicant must prove the requisites of contempt (the order, service or notice, non-compliance, and willfulness and mala fides) beyond reasonable doubt.....

Counsel applied the principles discussed in the authorities above; he submitted that before any action can be found to amount to civil contempt, the following for part tests have to be proved to the standard stipulated above:

- (a) Existence of a court order, counsel conceded to this element and submitted that there was a lawful court order issued.
- (b) The order was served or brought to the notice of the respondent. Counsel submitted that whereas the 3rd respondent got to know of the court order, the same was not directed to him as a party in order to comply.
- (c) Non-compliance with the order by the respondent. Counsel submitted that in compliance with the order of this Honorable court and guidance of the Attorney General the 3rd respondent invited the applicant on three different occasions; 6th May, 13th May, and 29th May, 2020 to appear before his supervisor, the Managing Director for the court directed appraisal on the 14th May, 25th May and 5th June 2020, using the procedure for appraisal, which the applicant is very much aware of, as provided for in the Human Resource Manual of employees of 1st respondent, after which the applicant was to appear before the Board of Directors which was prepared, to consider his expression of interest to renew his contract, on the 20th May,

28th May, 2020 in compliance with the 2nd directive of court basing on the alterative appraisals.

Counsel submitted that the aforementioned events or actions constituted timely and prompt compliance with this Honourable court's orders and court should not fault the respondents for attempting to implement such orders of court.

Counsel further submitted that in strict and timely compliance with the court orders coupled with guidance of the Attorney General and for further implementation of the court order, it's the 3rd respondent's submission that as the chairman of the board of the 1st respondent wrote to the applicant on three different occasions; 6th May, 13th May, and 29th May 2020 inviting him to appear before his supervisor for the court directed appraisals on the 14th May, 25th May and 5th June 2020.

Counsel submitted that on all these occasions the applicant deliberately refused to appear despite having been informed of the legal consequences of non-appearance. In the circumstances it's our submission that there was non disobedience of the court orders given that the applicant was invited and attempts made by the 1st respondent to enable him appear for the appraisals and evaluation exercise as directed by this honourable court. Counsel invited this honourable court to take note of the persistent and consistent conduct, efforts and attempts made by the respondents in order to comply and observe the court orders. This conduct cannot be said amount to disrespect or willful disobedience of the honourable court orders.

On the issue of non-compliance is whether it was willful or mala fide counsel submitted that this element must be proved to establish civil contempt of court. The test for proof of this element was stated in **Fackie case** (supra) which was cited with approval by the supreme court of Uganda in Sempebwa case. The court at pg. 29-30 held that;

"The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately and mala fide. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction even a refusal to comply that is objectively unreasonable may be bonafide"....

Counsel submitted that the requirements that the refusal to obey should be both willful and mala fide and that unreasonable non-compliance provided it is bonafide, does not constitute contempt accord with the broader-definition of the crime of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional

violation of the court order's dignity, repute or authority that this evinces. Honest belief of non-compliance is justified or proper is incompatible with that intent.

Counsel further submitted that the 1st and 2nd respondents were ordered by court to appraise the applicant and consider the reinstatement of the applicant or renewal of the applicant's contract of employment basing on the alterative appraisals. The respondents have on the other hand demonstrated willful, timely compliance.

Counsel submitted that the court gave wide/too much freedom to the 1st respondent to choose as to whether the applicant would be suitable for contract renewal or reinstatement but based on the appraisal exercise. This meant that those two options directed by court were conditional on appraisal and not absolute, neither were they automatic, but rather court was cognizant of the fact that it could not in any way direct the 1st respondent on how to run its internal business. Counsel submitted that this honourable court rightly and clearly ordered the respondents to consider as renewing or reinstating the applicant which process the 1st and 3rd respondents initiated but was subsequently frustrated by the applicant himself.

On the issue of alterative appraisals counsel submitted that court directed that the applicant be subjected to a process of appraisal factoring in the steps of interface that had been omitted.

Counsel further submitted that the applicant's submission that court annulled the previous process of evaluation and thus made void is misconceived whereas court found it illegal and procedurally improper, court only questioned and faulted the 1st and 2nd respondents on specific procedural steps in the previous evaluation, this did not mean that the respondents were barred from conducting a fresh evaluation exercise, this in itself would be self-defeating.

Counsel submitted that this honourable court should find that the respondents implemented the court orders by initiating the process, which process/implementation was supposed to be completed by the applicant availing himself and complete the exercise.

Analysis

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.

Contempt of court often referred to simply as “contempt”, is the offence of being disobedient to or disrespectful toward a court of law and its officers in the form of behavior that opposes or defies the authority, justice and dignity of the court.

Important to note is that there are broadly two categories of contempt;

1. One being disrespectful to legal authorities in the courtroom,
2. Or willfully failing to obey a court order.

Contempt of court has also been well described in the case of *Megha Industries Ltd vs. Conform Uganda Ltd HMC NO. 21 of 2014* where the judge held 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 was further elaborated in the case of *Hon. Sitenda Sebalu vs. Secretary General of The East African Community Ref. No.8 of 2012* that the conditions which must be proved by the applicant in contempt of court.

Section 98 of the Civil Procedure Act, Cap 71 gives the High Court inherent powers to make decisions that are pertinent to the ends of justice. The position of the law is that for contempt of court to be found, the following conditions must exist; a lawful order, the potential contemnor’s knowledge of the order and the potential contemnor’s failure to comply i.e. disobedience of the order (see *Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd v The Commissioner General Uganda Revenue Authority MA 42/2010*).

It is the position of the law that the standard of proof in contempt proceedings must be higher than proof of probabilities and almost but not exactly beyond reasonable doubt. See *Hon. Sitenda Sebalu Vs. Secretary General Of The East African Community No.8 Of 2012*

The case of *Hadkinson v Hadkinson [1952] All ER, Romer L.J* relied on the case of *Church v Cremer (1 Coop Temp Cott 342)* where it was held that “A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it . . . as long as it existed”.

The principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders 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. Further, it is not for that party to choose whether or not to comply with such order. See *HOUSING FINANCE BANK LTD & ANOTHER VS. EDWARD MUSISI MISC. APPLN NO. 158 of 2010*

The order must be complied with in totality in all circumstances by the party concerned, subject to the party's right to challenge the order in issue in such a lawful way as the law permits.

It is the position of the law that to disobey an order of court or offer no explanation for non-compliance to the issuing court, at any party's choice or whims, on the basis that such an order is null or irregular, or is not acceptable or is not pleasant to the party concerned is to commit contempt of court.

This court is alive to the fact that on 14th April, 2020 a ruling in Miscellaneous Cause No.270 of 2019 was delivered in favour of the applicant with three orders; the first order was declaratory in nature, the second was *certiorari* which is a quashing order and the third which is the last was mandatory in its compelling nature to the respondents to do what court has commanded.

The court in its ruling directed that the applicant be subjected to a process of appraisal of renewing his contract of employment or reinstating the applicant.

The applicant being an employee of the 1st respondent is aware of the internal mechanisms that are followed in renewing contracts of the 1st respondent's employees.

The court gave wide freedom to the respondents to choose as to whether the applicant would be suitable for contract renewal or reinstatement but based on the appraisal exercise. This means that the two options directed by court were conditional on appraisal, neither were they automatic, but rather court was cognizant of the fact that it could not in any way direct the 1st respondent on how to run its internal business the end result of would lead to court extending its jurisdiction and powers into the internal affairs and corporate management of the 1st respondent, thereby usurping its duties and general functions which are purely statutory and not assumed. The court's role is restricted only to ensuring that the decision-maker acts within the law, and according to law, and not to see what decision he makes.

The judicial reluctance to interfere also arises from a feeling that the non-expert judges ought not to interfere unduly with decisions of the expert administrators otherwise administration may suffer. The court would not enter on the merits of a case by embarking upon enquiry into the facts. It is for the authority having discretion to draw its own conclusions upon the material before it and a court ought not to interfere with final decision based on facts. It is not the function of courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law. In absence of any vitiating element in the process of making a

discretionary decision, such a decision is not revisable on the merits. See *Raghupathy v Andhra Pradesh* [1988] AIR SC 1681

In my view contempt of court is not the appropriate procedure since the court's orders were very clear and the court could not in any way direct the 1st respondent on how to run its internal business. In my view what would be the appropriate procedure for the applicant is filing a fresh suit against the respondents to renew his contract. The new allegations of noncompliance where facts to help in the new cause of action against the 1st respondent. The same could not be pursued under contempt of court proceedings as the applicant has filed.

I find that in the instant case the respondents are not in contempt of court orders and it's the court's finding that the respondents made several attempts that initiated the processes to implement the said orders.

This application is dismissed with no order as to costs.

I so order

SSEKAANA MUSA

JUDGE

19th/04/2021