

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 843 OF 2021  
(Arising out of Miscellaneous Cause No 287 of 2021)**

**ATTORNEY GENERAL:.....APPLICANT**

**VERSUS**

**MALE MABIRIZI K KIWANUKA:.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING (NO.2)**

The Attorney General moved this court by way of two letters dated 7<sup>th</sup> February 2022 and 11<sup>th</sup> February 2022 bringing it to the attention of court the contemptuous conduct of the respondent in a letter dated 1<sup>st</sup> February 2022 and also in tweets made on the respondents Twitter account @MaleMabiriziHKK, attacking the judicial competence and integrity of Honourable Justice Musa Sekaana.

The Learned Attorney General condemned this kind of conduct and further contended the letters and posts are in violation of an order made in this application strongly warning Mr. Male Mabirizi to stop attacking judicial officers.

The Learned Attorney General attached evidence of tweets to the above applications and also filed affidavits in support of the applications.

The Learned Attorney General moved court and requested that Mr. Male Mabirizi be summoned to show cause why he should not be held in contempt of court for the said twitter posts.

In support of the application, the Learned Attorney General (applicant) filed two affidavits by Oburu Odoi Jimmy setting out the grounds as follows:

1. The Respondent-Male Mabirizi wrote a letter to the President, Uganda Judicial Officers Association, titled **“INTENTION TO SUE FOR 850M OVER JUDGE SEKAANA MUSA”** and it contained the following statement;

**“It is unfortunate that COWARDL Judge Sekaana Musa, who is facing disciplinary actions in Judicial Service Commission for purposes of having him removed from office has resorted to using your office to resolve his personal unethical challenges. You ought not to have allowed your Association to be misused. Let Sekaana carry his own cross until when he is removed from office.”**

2. The above allegation to the effect that Hon. Justice Musa Sekaana engaged in improper and unethical conduct in respect of ongoing disciplinary against him by Judicial Service Commission, was not substantiated by Mr. Mabirizi in the said letter.
3. That following the delivery of the above said ruling, the Respondent made or posted various contemptuous comments on his Twitter account @MaleMabirizi, which attacked and disparaged the competence and integrity of Honourable Justice Musa Sekaana as a judicial officer.
4. On the 28<sup>th</sup> January 2022 Mr. Male Mabirizi posted to his twitter account @MaleMabiriziHKK the following captioned words: **“SSEKAANA IS A DISGRACE..”**

5. On 28<sup>th</sup> January 2022 Mr. Male Mabirizi posted on his Twitter account @Male MabiriziHKK the following captioned words: **“SSEKAANA, who can’t know that imposing “a fine of 300m” and “a strong WARNING” in the same conduct is DOUBLE JEOPARDY is not fit to even sit in a small family tribunal....@IsaacSsemakadde”**.
  
6. On 28<sup>th</sup> January 2022 Mr. Male Mabirizi posted to his Twitter account @MaleMabiriziHKK the following captioned words: *“SSEKAANA was never qualified for this @ug-lawsociety ‘award’ he is extremely unethical & incompetent even to win a Magistrate Grade 2 Award...@IsaacSsemakadde come and see a fake award..”* He attached to this post an image of Justice Ssekaana with the words *“Award winner for Excellence from the bench” Uganda Law Society 2021 Awards’*.
  
7. On 29<sup>th</sup> January 2022 Mr. Male Mabirizi on his Twitter Account @MaleMabirizi replied to the post which stated that *“Sekaana needs to be taken for mental check up”* by stating the following captioned words: **MENTAL CASE: @Comrade@IsaacSsemakadde, please go through with a view of approving...”**
  
8. On 30<sup>th</sup> January 2022, Mr. Male Mabirizi posted to his Twitter account @MaleMabiriziHKK the following captioned words: **“SSEKAANA also “lacks courage to do justice without fear & favour, is biased, suffers from the vice of self-interest, is tardy, indolent & incompetent...fall in romance of aggrandizement & populism (he) is a danger to the state & society” @IsaacSsemakadde”** He attached to this post a picture of his letter to the Secretary of the Judicial Service Commission seeking the removal from office of Justice Phillip Odoki.

9. On 30<sup>th</sup> January 2022, Mr. Male Mabirizi posted to his Twitter account @MaleMabiriziHKK the following captioned words: **“SSEKAANA’S decision is NULL AND VOID”**. He attached to this post a picture statement signed by himself which was titled **“SSEKAANA’S CONTEMPT ‘RULING’ THAT I PAY A FINE OF UGX 300,000,000/= IS NULL & VOID”**
10. On 1<sup>st</sup> February 2022 Mr. Male Mabirizi posted on his Twitter account @MAleMabirizi the following captioned words: **“..850...COWARDLY Judge Ssekaana...facing multiple disciplinary actions in Judicial Service Commission...having him removed...has resorted to using your office to solve his ...unethical challenges...demonstrates the rot and hypocrisy in our court system...03 days...”** He attached to this post a picture of his letter dated 1<sup>st</sup> February 2022.
11. That the above posts were calculated to and tended to bring Justice Musa Ssekaana into contempt and to lower his judicial authority. Furthermore the said posts tended to scandalize and lower the authority of the High Court.
12. The respondent made additional comments from his @MaleMabiriziHKK to @IsaacSsemakadde as captured in the Investigation report by Uganda Communications Commission through his twitter account as hereunder;

*SSEKAANA did not make an order that I pay 300m fine. All judges in trying to defend the size of his ka ‘animal’ say he recommended sanctions “I REJECT the recommendations...then We argue ULS...oba LUBAALE WE KYANAMUKA AKA YAMULUMA? Anti afuuse KISEKERERWA..... Comrade @IsaacSsemakadde, I am looking for @musa\_ssekaana’s wives & concubines to tell me how small the ‘thing’ is.....this was made in reply to*

*a post by @IsaacSsemakadde.....This 'judge' has either a small brain or small penis-but neither of his lordship's inferiorities will be cured by UGX 300million (85,000/-) fine imposed on our Rule of Law Champion. @JudiciaryUG shd do more to restrain its 'young Turks' from embarrassing.*

*Comrade @IsaacSsemakadde ono omwana agenda kututwala buli wa NAKYEYOMBEDDE wa 'judge' to tell us the size of his ka 'animal'.....eno yalinye ya maggye...*

*Comrade @IsaacSsemakadde you are good to go on with ascertaining the actual size of the judge's ka 'animal' since upon sealing and signing of the NOTICE OF APPEAL by Court & serving it upon KIRYOWA KIWANUKA. COURT OF APPEAL will determine the size of his brain.....*

*Comrade@IsaacSsemakadde obujulizi buubuno, mbu work myeeee....akaninkini tekalasa bulungi.....wamma kyava yeyisa atyo.....*

*SSEKAANA MUSA's "Multiple concubines.....bano abaana bamanyi ebyaama.....sobi at the respondent's Twitter handle is @MaleMabiriziHKK.*

13. That in making the above contemptuous comments/posts, Mr. Male Mabirizi acted in violation of a warning issued in the Misc. Application No. 843 of 2021, that he should stop attacking judicial officers.
14. That it is in the interest of the due administration of justice that this court sanction Mr. Male H. Mabirizi K Kiwanuka by committing him to prison for his violation of a subsisting court order.

The court upon receipt of the above complaints together with supporting evidence of the contemptuous conduct of the respondent issued a *Notice to Show Cause* why the respondent-Male Mabirizi should not be committed to prison for violating a court Order dated 9<sup>th</sup> February 2022.

The Respondent filed a letter to the Judge dated 10<sup>th</sup> February 2022 titled: **OPPOSITION TO APPLICATION TO HAVE ME COMMITTED TO PRISON FOR ALLEGED 'VIOLATING A COURT ORDER IN MISC APPLICATION NO. 843 OF 2021 ATTORNEY GENERAL B MALE H. MABIRIZI KIWANUKA** stating that:

1. I have come across your owned signed Notice to show cause why I should not be committed to Prison for violating a Court Order. I state that there is no reason to tamper with my liberty.
2. Constrained by the short notice, the reasons against committal are:
  - 1) I have never been served with any court order for misc. Application No. 843 of 2021 either by the Respondent or any other person.
  - 2) I am not aware of which court Order was allegedly violated.
  - 3) Misc. Application No. 843 of 2021 Ruling is on APPEAL.
  - 4) I have filed Misc. Applications No. 85 & 86 of 2022 for stay of execution and are pending determination by court.
  - 5) I have applied for recusal of Judge Ssekaana Musa and I am yet to get the mandatory response.
  - 6) I am not aware of any order stating Committal to prison as an alternative to compliance with it, hence it has no basis.
  - 7) Civil Prison is not available in the instant case since it is designed to enforce a positive action.
3. I pray for time to file my written submissions to back up the above with modern binding and persuasive authorities.
4. Supported by my Affidavit, I Pray for ruling on recusal, allocation and fix hearing of Misc. Applications No. 85 and 86 of 2022 for stay of execution.

The respondent filed an affidavit to support the letter and repeated the same statements as his evidence in support to oppose the notice to show cause.

The Applicant was presented by *Ms. Patricia Mutesi-Assistant Commissioner* from Attorney General's chambers and the Respondent was represented by *Mr. Nuwe Noel* from M/s Ojok Advocates.

At the hearing of this Application parties made oral submissions which have been considered in this ruling.

The Issues for determination are thus:

1. *Whether the Respondent is in contempt of Court of court after the 1<sup>st</sup> ruling of the court?*
2. *What remedies are available to the Applicant?*

### **Determination**

*Whether the Respondent is in Contempt of Court after the 1<sup>st</sup> ruling of the court?*

The applicant's counsel submitted that there is a report from UCC that shows that the twitter account @MaleMabiriziHKK is owned by the respondent and this is confirmed by the earlier finding of this court.

It was the contention of counsel that the twitter posts and letter by the respondent are intended to show that Judge Ssekaana Musa is incompetent as a judicial officer; Not fit to sit in a small family tribunal; extremely incompetent to win ULS award; needs a mental check; lacks courage...incompetent and he is danger to state and the society; the decision is null and void.

The applicant's counsel further submitted that the posts amount to contempt of court. The said statements made by Male Mabirizi where calculated and intended to scandalize this court and bring the court into contempt as well as scandalize the entire High Court. The said statements went further than merely attacking the judge but demonstrated an attack to the entire court as whole.

The statements by the respondent and the conduct ought to be punished as it creates doubt in the minds of the public since he asserted that it was null and void. It was calculated and intended to lower the authority of court which made the decision by imputing that the ruling should not be accorded any respect.

The respondents statements were intended to undermine the confidence of the public in the character and competence of court and by extension in the high Court and it would impact negatively the administration of justice in Uganda. The essence of Contempt is not to protect the judge but to protect the public.

The respondent's counsel submitted that the respondent has never been served with the court order which he is alleged to have violated and therefore he could not have violated orders he was not aware of or served on him.

The accusations made touches on the integrity of the presiding judicial officer who is also hearing the matter. The respondent made an application for recusal of the judge and it was for this reason that the respondent was trying to avoid such litigation involving the judge. He excused himself from making further submissions about the character assassination of the judicial officer as reflected in the different tweets.

The applicant's counsel contended that the respondent was fully aware of the orders made in the ruling since he duly filed a Notice of Appeal against the same ruling. Secondly, he also attached the orders made by court in the several tweets made on his twitter account.

The respondent has filed applications for stay execution of the said orders as well as set aside the ruling. Therefore he is fully aware of the orders made by court in the said ruling. That it is in the interest of protecting the dignity of this court to sanction Mabirizi in a deterrent manner otherwise it will become a habit.



## *ANALYSIS*

The Learned Attorney General moved this court to stop the contemptuous conduct of the respondent which was made repetitively in the letters and tweets on his twitter account. The court opted to issue a notice to show cause why the respondent should not be committed to prison for being in contempt of court. The respondent immediately by letter and affidavit in support responded to the notice to show cause and later instructed an advocate to represent him in the proceedings.

The respondent in addition filed another letter requesting for recusal of myself in the matter as he has always done in all matters involving himself before this court. The respondent has made it a habit to always seek recusal of judicial officers and this court declined to respond until when the matter is heard.

The application for recusal by the respondent lacked merit and he was raising the same grounds as this court had earlier refused in the similar application for recusal. The application for recusal should not be made repetitively or used as way of stalling court proceedings which is a fashion the respondent has always intended to use in different matters.

The said abusive attacks in the letters and tweets by the respondent are intended to scandalize the court and intimidate the entire judiciary in exercise of their constitutional mandate. The strong warning given to the respondent in addition the fine of 300,000,000/= was intended to send a strong signal against such attacks on judicial officers. Court Orders are not made in vain and are intended to serve the purpose for which they are issued. However 'stupid' or 'useless' an order may appear, it must be obeyed. This is a country of laws not of men and we must uphold the rule

of law through obeying orders of court. The country will descend into anarchy if such a culture of disobeying lawful court orders is allowed to flourish.

The respondent in total defiance has continued to make relentless attacks on the judicial officers and the entire judiciary with the sole purpose of undermining its authority. The object of contempt proceedings is not to afford protection to judges, personally from imputations to which they exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. See *Brahma Prakash Sharma & Others v The State of Utter Pradesh [1954] AIR 10*

The Supreme Court of Uganda elaborated *In Re: Ivan Samuel Ssebadduka (Arising from Presidential Election Petition No. 01 of 2020-Ivan Ssebadduka v The Chairman Electoral Commission & 3 Others)* on the principle of contempt of court as being securely embedded in the 1995 Constitution. Article 126(1) thereof provides as follows:-

*(1) Judicial power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with law and with values, norms and aspirations of the people.*

*“Article 126(1) of the Constitution cited above, derives from the provisions of Article 1 of the Constitution on sovereignty of the people; which recognizes that all power vests in the people, and that all power and authority of the organs of government derives from the Constitution, which in turn derives its authority from the people.*

*Therefore, any affront on judges, who are indeed handmaidens of justice, is in fact an affront on people in whom judicial power vests; and for whom the judges render justice through the exercise of due process. Any insult, as this one is directed at the Justices of this Court, or at any judicial officer for that matter, amounts to contempt."*

Therefore the purpose of the law of contempt seems to be for the protection of the dignity, integrity and authority of the courts. The law is in reality in place to protect the public from any act calculated to obstruct or interfere with the due course of justice, or the lawful process of the courts. Therefore, Scandalous attacks upon judges are punishable.....upon the principle that they are, as against the public, not the judge, an obstruction to public justice. See *Robert Austin Mullery v R [1957] EA 138*

Similarly, in case of *The State (DPP) v Walsh [1981] IR 412 at 421 O'Higgins, CJ* stated that scandalising the court is committed:

*"where what is said or done is of such a nature as to be calculated to endanger public confidence in the court which is attacked and, thereby, to obstruct and interfere with the administration of justice. It is not committed by mere criticism of judges as judges, or by the expression of disagreement – even emphatic disagreement – with what has been decided by a court. The right of citizens to express freely, subject to public order, convictions and opinions is wide enough to comprehend such criticism or expressed disagreement.*

*Such contempt occurs where wild and baseless allegations of corruption or malpractice are made against a court so as to hold (sic) the judges'... to the odium of the people as actors playing a sinister part in a caricature of justice'."*

In *Re Kennedy and McCann*, [1976] IR 382 at 385-386 O'Higgins, CJ had said:

*"The right of free speech and the full expression of opinion are valued rights. Their preservation, however, depends on the observance of the acceptable limit that they must not be used to undermine public order or morality or the authority of the State. Contempt of court of this nature carries the exercise of these rights beyond this acceptable limit because it tends to bring the administration of justice into disrepute and to undermine the confidence which the people should have in judges appointed under the Constitution to administer justice in our Courts."*

The Chief Justice noted that the distinction between contempt of court and what can fairly be regarded as reasonable criticism had been stated many years previously by Lord Russell of Killowen CJ, in *R v Gray* [1900] 2 QB 36 at 40 as follows:

*'... Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke LC characterised as 'scandalising a court or a judge'.<sup>7</sup> That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or to the public good, no Court could or would treat that as contempt of Court'."*

Therefore, scandalizing court is an attack on individual judicial officers or the court as whole or without reference to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the particular mind and impair the confidence of the people in the courts which are of prime to litigants in the protection of their rights and liberties.

The protection of Courts from attacks of this kind where cases are pending is a vital matter, and it is in the public interest in such cases that the Court should intervene and deal severely with the offender. The power to punish for contempt is not meant for giving protection to individual judges. On the contrary, it intends to inspire confidence *"in the sanctity and efficacy of the judiciary, though they do not and should not flow from the power to punish for contempt"*. Rather, such principles should lie on solid foundations of trust and confidence of the people – a reassurance to them that the judiciary is fearless and impartial.

A powerful judicial system is a condition precedent *sine que non* for a healthy democracy. If browbeating the court, flagrant violation of professional ethics and uncultured conduct is tolerated that would result in ultimate destruction of a system without which no democracy can survive.

When there is deliberate attempt to scandalise the court, it shakes the confidence of the litigant public in the system, the damage is caused to the fair name of the judiciary. If a litigant or a lawyer is permitted to malign a Judge with a view to get a favourable order, administration of justice would become a casualty and the rule of law could receive a setback. The judge has to act without any fear thus no one can be allowed to terrorise or intimidate the judges with a view to secure orders of one's choice. In no civilised system of administration of justice, this can be permitted.

The respondent's statements on his twitter handle @MaleMabiriziHKK and letter were contemptuous and intended to scandalize the court or to show that the respondent is above the law and 'untouchable'.

The judiciary and court specifically must fight for its space and protect its authority from attacks by any such litigant or person who scandalizes it like the respondent and his ilk.

In the case of *R v Metropolitan Police Commissioner, Ex parte Blackburn* (No. 2)[1968] 2 All ER 319 cited in ***Re:Ivan Samuel Ssebadduka*** by Supreme Court noted as follows;

*“Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, or our decisions erroneous, whether they are subject to appeal or not. All we ask is that those who criticize us will remember that, from the nature of our office, we cannot reply their criticisms. We cannot enter into public controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.”*

Therefore, proceedings for contempt serve a valuable function here in preventing the manipulation of public opinion in relation to the judiciary and the administration of justice by politically – motivated persons or cynically – minded members of the public like the respondent who are always on the social media. The respondent has made several tweets on the social media and reckless letters targeting the judicial system and this has a direct effect of obstruction of justice.

The courts ought to deter future attacks on the judiciary by early preventive action. Our courts have stressed the deterrent element in contempt proceedings for scandalising. A poisonous flow, unhindered, may eventually destroy completely the stream of justice. The respondent’s tweets are intended to destroy the judicial system with systematic attacks on every judicial officer.

*What remedies are available?*

However as stated previously, contempt proceedings are between the Court and the alleged contemnor and therefore this application is not a suit between the AG and the Respondent. As such the court is not bound by the orders sought by the Applicant, but this court has found the Respondent acted in contempt of court after he was strongly warned in the earlier ruling to desist from attacking judicial officers.

In determining the appropriate sanction, the Court should consider that the objective of the offence of contempt of court proceedings is to protect the public interest or confidence in the due administration of justice. This is done by punishing acts or statements which tend to abuse or make a mockery of administration of justice, or which tend to lower the authority of individual Judges or the court.

The repeated nature of the attacks after the strong warning would invite this court to give a deterrent sentence to the respondent as a reflection of the gravity of the likely effect of his contemptuous statements on the administration of justice in Uganda.

*Therefore, the respondent is in contempt for the second time after the court had earlier issued a STRONG WARNING to him to desist and/or stop attacking judicial officers. The respondent should be arrested and imprisoned for a period of Eighteen (18) months. The costs shall be in the cause.*

*I so Order*

**SSEKAANA MUSA**

**JUDGE**

**15<sup>TH</sup> FEBRUARY 2022**