

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

CIVIL APPLICATION NOS. 25 & 26 OF 2021

(ARISING FROM CIVIL APPEAL NO. 08 OF 2018)

**CORAM: ARACH-AMOKO; MWONDHA; TIBATEMWA-EKIRIKUBINZA;
TUHAISE; CHIBITA; JJSC**

BETTY KIZITO ::: APPLICANT

VERSUS

- 1. DICKSON NSUBUGA**
- 2. DIANA SEMAKULA**
- 3. DENIS KAVULU**
- 4. JOYCE NANSUBUGA**
- 5. IVAN ZIMBE**
- 6. DANIEL KIZITO**
- 7. MARTHA NANKYA**

::: RESPONDENTS

Introduction:

This application was brought under rules 2(2), 6(2) (b), 42(1) and (2), 43 (1) and 50 of the Judicature (Supreme Court Rules) Directions, seeking the grant of orders that:

- 1. The respondents jointly and severally be held in contempt of court;**
- 2. The respondents be committed to prison for a period of one year as a sanction for contempt of court;**
- 3. The respondents jointly and severally pay the applicant UGX 300,000,000/= (Uganda shillings three hundred million only) as compensation for their actions of contempt of court.**
- 4. The respondents jointly and severally be found in contempt of court and pay to this court UGX 100,000,000= (Uganda shillings One Hundred Million Only) as a fine for their actions of contempt of court.**
- 5. The respondents immediately purge themselves of the contempt of this court.**
- 6. A permanent injunction doth issue restraining the respondents by themselves or through their agents, employers, employees, workmen and servants from burying the late DAVID KIZITO on the Applicant's property at Muyenga comprised in Kyadondo Block 244 Plot 5091.**
- 7. A writ of sequestration doth issue placing the respondent's property at the disposal of this court to be used to recover any remedies that the applicant may get them in this suit.**
- 8. The respondents bear the costs of this application.**

The application was supported by an affidavit sworn by herself. Two affidavits in reply were sworn by the 5th respondent, Ivan Zimbe. The affidavit in rejoinder was sworn by applicant.

Background to this application:

On the 19th September, 2019, the Supreme Court passed a decision in Betty Kizito vs. David Kizito Kanonya & Others, SCCA No. 8 of 2018 in which it ordered that:

- 1. “Since it is now impossible to make an order of subdivision of the Kisugu and Katwe properties which have long been sold to third parties, I would order for the reinstatement of the appellant onto the property at Muyenga.**
- 2. Consequently, I would order the Commissioner Land Registration to reinstate the appellant onto the certificate of title of the suit land as a tenant in common with the 1st respondent.**
- 3. General damages in the sum of Ushs. 100,000,000/= be awarded to the appellant.**
- 4. The costs of this appeal and in the courts below would be awarded to the appellant.”**

That order was later amended by Court on the 7th October, 2020, vide **David Kizito Kanonya & Others vs. Betty Kizito**, SCCA No. 19 of 2019, specifically Order 3 reducing the general damages from 100,000,000/= to 70,000,000/=. It read as follows:

- 3 “(i) General damages in the sum of 70,000,000/= are awarded to the appellant.**

(ii)The sum above shall attract interest at 6% per annum from the date of judgment (19th September, 2019) till payment in full.”

To date the orders of this Court have not been enforced.

In her affidavit in support, the applicant deponed, *inter alia*, as follows:

“2. THAT on 19th September, 2019, this Court issued Judgment and a decree in my favour in Civil Appeal No. 8 of 2018 Betty Kizito vs. David Kizito & Ors. (A copy of the Decree and orders are attached hereto marked “A” and “B”).

3. THAT in the said Decree this Court ordered that the Applicant be reinstated onto the suit property at Muyenga and the respondents. See Annexure “A” above.

4. THAT the court also ordered that the respondents pay the Applicant UGX. 70,000,000/= as damages with interest and costs of the suit.

5. THAT unfortunately, David Kizito the 1st respondent in the appeal has died on the 9th June 2021. A copy of an announcement of the same by his wife Joyce Nakakande is attached hereto marked “C”.

6. THAT the late David Kizito was a father to the respondents.

7. THAT before he passed on the Applicant made a demand for compliance with the Decree of this Court which the respondents refused to. (Copies of correspondence is attached hereto marked “D”, “E”, “F” and “G”).

12. THAT the intention of the respondents is to ensure the Decree of this Court is never enforced against them and rendered it nugatory.

14. THAT I am advised by my Advocates M/S Simon Tendo Kabenge Advocates whose advice I verily believe to be true that the actions and omissions of the respondents are;

(a) the actions of the respondents are calculated to disrespect judicial proceedings and lower the authority of this conduct.

(b) The intention of the respondents jointly and severally is to hold this court in very low regard and make a mockery justice and this court and render it powerless.

(c) the actions of the respondents jointly and severally attack on the independence of the judiciary and an abdication of the respondent's constitutional duty to accord the courts of law all the assistance they require in the dispensation of justice.

Ivan Zimbe, the 5th respondent, who saw the affidavit in reply deponed as follows;

That the respondents are not in contempt of the court orders and have taken steps to execute the decree of the court as follows;

- i. THAT the Supreme Court gave judgement in *Betty Kizito vs. David Kizito Kanonya and 7 others*, Civil Appeal NO. 8 of 2018 in favour of the Appellant (now applicant), Betty Kizito, and made orders that the Applicant be restored onto the title as a tenant in common for land situated at Kyadondo Block 244 Plot 5091 measuring 0.20 hectares situated at Muyenga,

general damages of Ushs. 100,000,000 and costs of this court and the courts below.

ii. *THAT on 7th October 2020, the orders on appeal were amended on review as follows; Orders 1,2 and 4 remained the same; general damages were amended to Ushs. 70,000,000 at interest of 6% per annum.*

6. *THAT the Respondents are not in contempt of the court's orders and have taken steps to execute the decree of the court as follows;*

(a) The respondents signed the decree the decrees extracted by two of the Applicant's lawyers. (Attached as 'A' and 'B')

(b) The Respondents wrote the Lands Registration Board requesting them to reflect the orders of the court in the above-mentioned judgment and review. (Attached as 'C')

(c) The respondents made a request to deposit their instalments for general damages to the Applicant's bank account. (Letters and correspondence from Applicant attached as 'D' and 'E').

(d) The Respondents through the directives of the Registrar made a deposit to the High Court and will continue to make these deposits. (Attached as 'F')

(e) THAT the 1st Respondent was buried in Mpambire, Kyagulanyi, Mpigi district on 14th June 2021. (Attached as 'G')

(f) THAT the parties were registered on the suit property as tenant in common and the property does not devolve upon

the Applicant as sole owner upon the death of the 1st Respondent.

(g) THAT the court does indeed have inherent powers to achieve the ends of justice and has exercised this power before in Civil Application 19 of 2020.

(h) THAT the parties were registered as tenants in common and not joint tenants and that it was the respondents who were in danger of being deprived of their constitutional right to own property.”

In her affidavit in rejoinder, the applicant deponed as follows:

5. *That in reply to paragraph 6, I am advised by my lawyer’s M/s Simon Tendo Kabenge Advocates, which advice I believe to be true that;*

(a) Counsel for the Respondents held onto annexure A and that the same was never endorsed by this Court. The registrar of the court declined to sign the decree and directed that a separate decree be extracted separating the decree and the order.

(b) That subsequently my lawyers wrote to the respondents’ lawyers who neglected the same and lawyers moved the court to endorse the decree without counsel for the respondent’s approval. (See letter dated 26/05/2021 attached hereto marked F)

(c) That am not aware of any fraud committed by my lawyer’s M/s Simon Tendo Kabenge Advocates and in particular Advocate Simon Tendo Kabenge, Esq.

6. In specific reply paragraph 6(b), the same is not true, the owners' copy of the certificate of title has never been handed over to carry out the changes, annexure C was just a letter to lodge a caveat. (See Copy of the caveat attached hereto marked G and letter dated 9th January 2013 attached hereto marked HI which was never complied with)

8. In reply to paragraph 6(d).

(b) I am not aware of any directive by the registrar to make instalment deposits. That a Notice to show cause was issued by the Registrar on the 18 October 2021 which the Respondents did not attend and adjourned to 15th October 2021 and served by the Court. (See copies of the notice to show cause attached hereto marked JK and L)

(c) The Respondents turned into executors and deposited Ugx. 500,000/=Uganda Shillings Five Hundred Thousand Only) in a bid to frustrate court process.

10. That in reply to paragraph 6(f), the parties are currently registered on the suit property as joint tenants. (See annexure N attached to the affidavit in support)

12. That am not aware of any agreement/arrangement to pay costs of Ugx. 200,000,000/= Uganda Shillings Two Hundred Million only) in monthly instalments.

Before this application could be heard, the applicant filed another application under Rules 2(2) vide **Betty Kizito vs. Dickson Nsubuga and 6 others**, SC Civil Appl. No. 26 of 2021 for orders that a temporary injunction doth issue restraining the Respondents and

their agents from burying the late David Kizito who had been the 1st respondent in the appeal on the Applicant's property at Muyenga comprised in Kyadondo Block 244 Plot 5091 and costs of the suit. This application was later withdrawn after the 1st respondent was buried in Mpigi.

Representation;

At the hearing, the applicant was represented by Mr. Simon Tendo Kabenge whereas the respondents were represented by Mr. Cephas Birungyi assisted by Martin Mbanza, Daniel Kaaya and Mathew Kazinda.

Both counsel filed written submissions which they adopted at the hearing.

Applicant's case

Counsel for the applicant argued his case under 2 issues namely;

1. Whether the respondents committed contempt of court?
2. What remedies are available?

Issue one:

He kicked off his submissions by defining what contempt of court is. He relied on **Black's Law Dictionary**, 7th Edition which defines contempt of court to mean conduct that defies the authority or dignity of court. He also relied on **Halsbury's Laws of England**, Vol 9, 4th Edition to draw a distinction between criminal and civil contempt.

Counsel while relying on the case of **Stanbic Bank (U) Ltd and Jacobsen Power Plant Ltd vs. The Commissioner General Uganda Revenue Authority** HC M.A No. 42/ 2010 argued that for court to determine whether there was contempt, there must be existence of a lawful order, the potential contemnor's knowledge of the order and the potential contemnor's failure to comply (disobedience of the court order).

Counsel submitted that it was not in dispute there was a court order reinstating the applicant on the suit land and that the respondents were aware of the existence of the same.

Counsel further submitted that there was disobedience / defiance of the court order by the respondents. He argued that the respondents in defiance of the court order entered onto the land decreed by court to the applicant dug a grave to bury the late David Kizito Kanonya (1st respondent). That despite warnings vide a letter dated 10th June 2021 notifying the respondents of the intended contempt and requesting them to purge themselves of the court, the respondents failed to oblige when they wrote back the following day alleging that they were not aware of any order stopping the burial of the late David Kizito on the suit land.

Counsel submitted that the above actions were part of the process of undermining and lowering the authority and orders of this Court.

Counsel prayed Court to find the above issue in the affirmative.

Issue two: Remedies

Counsel submitted that civil contempt is punishable by way of committal to civil prison or by way of sequestration, fine or an injunction against the contemnor. See, **Stanbic Bank (U) Ltd vs Commission General Uganda Revenue Authority** (supra).

Counsel argued that the actions of the respondents were aimed at permanently depriving the applicant of her land and exposing her to irreparable damages and as a result the applicant has been caused psychological stress, anxiety and anguish. That for such reasons, the applicant proposed as compensation a sum Ugx, 300,000,000/= for actions of contempt by the respondents and Ugx. 100,000,000/= being a fine for contempt of court.

Counsel argued that it was only fair that a writ of sequestration be issued placing the respondent's property at the disposal of thus court to be used to recover the remedies granted against the respondents.

Counsel also prayed Court to order that the respondents be arrested and committed to civil prison for contempt of court.

Counsel also prayed for costs of the application.

Respondents' Case.

In response to the counsel for the applicant's submissions, counsel for the respondents opposed the application and denied any disobedience of the Court order. He submitted that upon the delivery of the judgment on review on 7th October 2020, the lawyers for both parties began corresponding towards the execution of the court orders on behalf of their clients.

He contended that the Applicant is responsible for the delay in the execution of the said decree. That the Applicant sought to enforce the subdivision of the suit property which was contrary to order 2 of the Court in which the Commissioner Land Registration was to cancel the names of the 2nd, 3rd, 4th, 5th, 6th, 7th respondents from the certificate of title and reinstate the name of the applicant onto the title as a tenant in common with the 1st respondent. That the court did not order for subdivision of the suit land and can only be done through amicable settlement

Counsel submitted that the applicant's son who attended a meeting held by the applicant and the respondents attempted a forced subdivision of the suit land.

Counsel contended that on 9th June 2021, when the 1st respondent, David Kizito Kanonya died, a dispute ensued between the applicant and the respondents who wanted to bury their father on the suit land but were stopped by the applicant who wrote to the Inspector General of Police in a letter dated 11th June 2021, stating that the 1st respondent who was a joint tenant's death meant that the whole suit property solely belonged to the applicant and that the applicant had no claim whatsoever.

Counsel for the respondents' request for clarification of the ownership issue was met with the confirmation of the applicant's claim that she was a joint tenant and that the joint tenancy had turned into sole ownership after the death of her joint tenant David Kizito.

Regarding the payment of general damages of 70,000,000/= at 6% per annum from the date of judgment until payment in full, counsel for the respondent denied allegations that the respondents were guilty of failing to pay the quantum of damages awarded. He submitted that on 27th April 2021, the respondents vide a letter requested for a bank account number to make deposits to the applicant to which the applicant through her lawyer replied stating that she was not aware of any orders to pay in instalments and would only accept a lump sum amount.

He further argued that in compliance of the Court order, the respondents have since approached the Registrar who gave directions on the process for making instalments at court and that the respondents have since made their instalment to the secretary to the judiciary.

On the issue of remedies available, counsel submitted that remedies of compensation and fines sought for by the applicant is a mockery of court and a cruel attempt to completely disfranchise the 1st respondent and his descendants even beyond the grave.

On the issue of sequestration of the respondent's estate and imprisonment of the respondents, counsel submitted that since the 1st respondent died, it was not clear who was supposed to be imprisoned. They argued that in the Stanbic Bank case (supra) as cited by the applicant, the court declined to grant orders for punitive damages and exemplary damages for reasons that are not usually awarded for contempt of court but are reserved for oppressive,

arbitrary or unconstitutional action by servants of government. He further argued that the consequences of contempt of court should not be used to enrich the plaintiff but to deter the defendant from his conduct. He submitted that a fine or jailing is meant to enforce obedience of the court order and not to punish the alleged offender yet the applicant seems to be more interested in punishing the respondents than having the orders executed.

On the issue of costs, counsel for the respondent submitted that the law has it that costs follow the event unless there are sound reasons as to why costs should not be granted to the applicant. He stated that as such, the unscrupulous fraudulent behaviour displayed by the applicant disqualifies the applicant and her counsel to profit from the matter. Counsel stated that based on the history of the suit either side should bear its own costs.

Counsel prayed court to dismiss the application, order for rectification of the certificate of title to reflect the applicant and the 1st respondents as tenants in common per the orders of this court, declare the applicant in contempt of the court orders, declare the acts of Mr. Simon Tendo Kabenge, the applicant's lawyer as fraudulent, declare the applicant's actions fraudulent and costs be granted to the respondents.

Counsel for the applicant reiterated his earlier submissions in rejoinder.

Resolution:

We have had the benefit of considering the submissions of both counsel on this matter. The gist of the matter is the question as to whether the applicants are in contempt in court?

The term “contempt of court” has been defined by this Court in the case of **Re Ivan Samuel Ssebadduka**, Contempt proceedings arising from Presidential Election Petition No. 1 of 2020, which quoted with approval the case of **Johnson vs. Grant** SC 1923 SC 789 at 790 in which Lord President (Clyde) *inter alia*, explained it to mean:

“..... An offence consists in interfering with the administration of the law; in impeding and perverting the course of justice. It is not the dignity of court which is offended – a petty and misleading view of the issues involved- it is the fundamental supremacy of the law which is challenged.”

This Court went on to quote the case of **Morris vs. Crown Office** [1970] 1 ALL ER 1079 at 1087 where Salmon LJ stated the essence or purpose of contempt proceedings. He stated *inter alia* that:

“The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented...”

Halsbury's Laws of England, Contempt of Court (Volume 9 (1) Reissue)) 1 classifies contempt in 2. It states as follows:

“Contempt of Court may be classified as either (1) Criminal Contempt, consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced; or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgment, orders or other process of the Court and involving a private injury.”

The Supreme Court of Canada in **Poje vs. Attorney General for British Columbia** [1953] 1 S.C.R 516 at 522 distinguished the two types of contempt as follows:

“The distinction between contempts criminal and not criminal seems to be that contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due process of justice, are criminal in nature; but that contempt in disregarding orders or judgments of a Civil Court or in not doing something ordered to be done in a cause, is not criminal in nature. In other words, where contempt involved a public, where contempt involved a public injury or offence, it is criminal in its nature, and the proper remedy is committal- but where the contempt involves a private injury only it is not criminal in its nature.”

This decision is persuasive and we accept it as good law.

It is thus clear that criminal contempt involves a “public injury” which in essence means acts deliberately premeditated to diminish public respect due to the courts. Criminal contempt takes place when the contemnor interferes with the court’s ability to function properly. It may take the form of yelling at a judge presiding over a case, insolvent language, assaulting persons in the courts (court officers or not) etc.

Civil contempt on the other hand, occurs outside the court’s close realm. It usually takes the form of disregarding court orders and judgments. This, therefore, means that civil contempt must be brought to the court’s notice the conduct alleged to constitute the contempt of court.

The instant case is one that involves conduct that occurred outside the realm of court. The allegation against the respondents is that they disobeyed the orders of this Court in SCC Appl. No. 19 of 2019. This, therefore, falls under the classification of civil contempt.

Before delving into the merits of the alleged conduct consisting contempt of court, we wish to make clear the issue of parties to contempt of court proceedings which is pivotal to the determination of the matter.

The respondents’ affidavit in reply sworn by Ivan Zimbe, the 5th respondent and submissions seem to raise a counterclaim against the applicant. Counsel for the respondents argued that the applicant should also be held in contempt in court for having written to the Inspector General of Police stating that the 1st respondent, David

Kizito Kanonya should not be buried on the suit property because she was the sole owner of the same.

This is a misconceived argument. The nature of proceedings of civil contempt though initiated by a litigant who brings the alleged conduct believed to be in contempt to the attention of court in this case the applicant is between the Court on one side and the alleged contemnor. The applicant or litigant who brings the alleged conduct to the attention of court does not become a party to the proceedings, he/she merely assists court by furnishing information about the alleged contempt. This position was explained in the persuasive decision of Mubiru, J in **Florence Dawaru vs. Angumale Albino & Anor** HC MA No. 0096 of 2016 in which he stated as follows:

“However, for contempt that is not committed in the face of 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 contemnor.”

He further stated that:

There is a clear line of distinction between proceedings for civil contempt is regarded as a form of execution and enforcement of the order alleged to have been violated to the detriment of the party. It is in the nature and form of an appeal for execution and enforcement of the court's order for the benefit of the party. The right of a private party to move the court for civil contempt is therefore regarded as remedial.” (Emphasis added).

This decision though persuasive is good law and we adopt it as such.

Having determined that the true parties to these proceedings are the Court on one hand and the respondents, the alleged contemnors on the other, we find that the court shall not delve into the counter contempt of court claims made by the respondents against the Betty Kizito, the applicant whose role is restricted to bringing the alleged contempt conduct to the attention of court.

The power of this Court to determine matters of contempt has its foundation in Article 28(12) of the 1995 Constitution of the Republic of Uganda.

Rule 2(2) of the Rules of this Court also empowers this Court with wide powers to make necessary orders to achieve the ends of justice and prevent abuse of court process.

The case of **Sitenda Sebalu vs. The Secretary General of the East African Community**, Ref. No. 8 of 2012 (East African Court of Justice) set out the pre-conditions that must be satisfied before a court can hold a respondent in contempt. The court stated as follows:

“To prove contempt, the complainant must prove the four elements of contempt, namely:

- (i) The existence of a lawful order**
- (ii) knowledge of the order**
- (iii) The contemnor’s ability to comply**
- (iv) The potential contemnor’s failure to comply.”**

We have also considered the persuasive decision of Supreme Court of Canada in the case of **Carey vs. Laiken**, 2015 SCC 17 at paras. 32-35 which spelt out 3 elements that must be established by an applicant in a civil contempt proceeding to be:

- (1) “The order alleged to have been breached must state clearly and unequivocally what should and should not be done.**
- (2) The party alleged to have breached the order must have had actual knowledge of it.**
- (3) The party allegedly in breach must have intentionally done the act the order prohibits or intentionally failed to do the act that the order compels.”**

The abovementioned authorities clearly show that to prove contempt, the following must be proved:

(a) Existence of a valid order.

Where a valid court order exists, it must be obeyed in totality. A party who chooses to disobey the order without good reason risks being held in contempt.

. (See **LC Chuck and Cremier** [1896] ER 885)

(b) The Court order must state clearly and unequivocally what should and should not be done.

The court will be reluctant to punish or condemn an alleged contemnor for an order whose terms are unclear and ambiguous.

(c) The alleged contemnor must have actual knowledge of the court order.

Common law leans towards the requirement of personal service or actual knowledge of the existence of the court order. In some instances, knowledge of the court order may be inferred even in cases of willful blindness.

(d). The alleged contemnor must have intentionally done that act that the order prohibits or intentionally failed to do the act that the order compels.

There is need for proof beyond reasonable doubt of the alleged contemnor's deliberate conduct that has the consequence of disobeying the court order in issue. The applicant is however not required to prove that the alleged contemnor intended to bring court into disrepute. Also where the breach of the order is unintentional and accidental then the court may exercise the discretion to impose no penalty.

Even where the applicant satisfies all the aforementioned elements required to prove civil contempt, a court entertaining contempt proceedings still possesses the power to decline to make a finding of contempt where the alleged contemnor shows court that acted in good faith and was taking reasonable steps towards compliance with

the order. The remedy of contempt is a "last resort" and should be used with great restraint. Cromwell J, in **Carey vs. Laiken** (supra), stated that:

“If contempt is found too easily, a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect.” [...] As this Court has affirmed, “contempt of court cannot be reduced to a mere means of enforcing judgments...”

The facts at hand show that the judgment and orders that the respondents allegedly disobeyed were passed in this Court’s decision in SCCA No. 8 of 2018 on 19th September, 2019 as amended by further orders in SCC Appl. No. 19 of 2019 dated 7th October, 2020. The respondents in their affidavit in reply sworn by Ivan Zimbe, the 5th respondent admit that they were fully aware of the existence of the court order having been party to the proceedings. There is no dispute as to the understanding of the orders as they were clear and unequivocal.

This application was filed on 15th June 2021 nearly 2 years after the decision in SCCA No. 8 of 2018 and nearly 9 months after the amendment of the orders in SCCA No. 19 of 2019.

It is not in dispute that to date the orders of this court have not been implemented. Reinstatement of the applicant on the certificate of title of the suit property as a tenant in common has not been done. In his affidavit in reply, Ivan Zimbe the 5th respondent stated that the

respondents had written to the Commissioner Land Registration requesting his office to reflect the orders of court in SCCA No. 19 of 2019, that they had also made a request to deposit their instalments for general damages to the applicant's bank and that through the directives of the Registrar, they had made a deposit to the High Court and will continue to make these deposits.

The letter referred to above is dated 18th August, 2021 and this means that it was written ten months after the order of court was made. Even then, the respondents did not submit their duplicate Certificate of Title to the Commissioner Land Registration to enable the reinstatement. The applicant has been denied her right to subdivide her part of the suit property because the respondents argued that the order did not permit the applicant to subdivide the same. The applicant has also been denied vacant possession of the suit land contrary to the Court order.

The deposit that the respondents made to the High Court allegedly under the orders of the Registrar was made on the 27th October, 2021 approximately a year after the said order. Also the deposit made only amounted to 500,000/= (Five Hundred Thousand Shillings only) out of the 70,000,000/= (Seventy Million Shillings Only) that has since attracted interest on 6% since 19th September, 2019. The record shows that the instalment arrangement was a unilateral decision of the respondents since neither the applicant nor the court that made the order consented to this arrangement.

It is clear to us that the acts and omissions of the respondents are wilful, intentional and planned to block the applicant's rights that were granted in a valid court order. Their conduct displayed a lack of good faith and failure to take reasonable steps to comply with the order.

The remedies granted by court to correct wrongs occasioned to the successful litigant need to be treated with the seriousness they deserve. Litigants cannot be permitted the discretion to choose which orders to comply with and how to comply with the said orders. To allow court orders to be disobeyed would be to stride the road towards lawlessness and the risk of derailing the rule of law. A stitch in time saves nine. This is so true regarding the rule of law. If violations of court orders continue to go unpunished, then we run the risk of reversing the gains we have made towards respecting the sanctity of court orders, indeed, is what amounts to contempt of court. We therefore agree that the respondents acted contemptuously not simply towards a court order but to court and the administration of justice in general.

We accordingly find the respondents acted in contempt of court by failing/refusing and/ or neglecting to comply with the orders of court.

Penalties.

One of the most fundamental differences between civil and criminal contempt regards the goal of penalties in both forms of contempt. Whereas the goal of criminal contempt penalties is punitive, the

primary goal of civil contempt sanctions is to ensure compliance with the court order which would in turn protect the rights as between private litigants and not punishment of the contemnor.

Some principles guiding sentencing in both civil and criminal contempt set out in the Canadian cases of **(British Columbia) Health Employers Association vs. Facilities Subsector Bargaining Association**, 2004 31 B.C.L.R. 4th 124 (S.C.) and **Law Society of British Columbia vs. Hanson** 2004 BCSC 825, which we find persuasive include the following:

- The inherent jurisdiction of the court allows for the imposition of a wide range of penalties for civil and criminal contempt;
- Deterrence and denunciation are crucial in the imposition of penalties.
- Proportionality of sentence;
- The past record and character of the respondent, especially if the alleged contemnor has committed previous contempts;
- Need to protect the public;
- The gravity of the offence;
- The court may consider the level of penalty imposed in similar cases in the past;
- The extent to which the breach has affected the realisation of the court order;
- The court may impose appropriate conditions which if satisfied by the contemnor, the sanction can be avoided.

We have considered the guidelines set forth in the aforementioned cases which we adopt as good law.

The respondents in this matter have failed to take a number of reasonable steps to ensure compliance with the order. Be that as it may, not all is lost, the court order can still be realised. Also the respondents have not been committed for previous contempts in this Court.

In the spirit of promoting deterrence, we make the following orders:

- (1)The respondents shall comply with the orders of this court in SCCA No. 8 of 2018, as amended in SCC Appl. No 19 of 2019 in totality within 30 days from the date of this ruling.
- (2)The respondents purge themselves of contempt by complying with the orders of the Court in totality.
- (3)In the event that the respondents fail to comply with the Court order in totality, a fine of shs. 100,000,000/= (One hundred million shillings only) and a term of imprisonment shall be imposed on the respondents.

It is so ordered.

Dated at Kampala this.....6th..... day ofJune.....2022



Hon. Stella Arach-Amoko
JUSTICE OF THE SUPREME COURT

F Mwendha

Hon. Faith Mwendha

JUSTICE OF THE SUPREME COURT

Prof.

L Tibatemwa

Hon. Lilian Tibatemwa- Ekirikubinza

JUSTICE OF THE SUPREME COURT

Percy Tuhaise

Hon. Night Percy Tuhaise

JUSTICE OF THE SUPREME COURT

Mike J. Chibita

Hon. Mike J. Chibita

JUSTICE OF THE SUPREME COURT

Delivered on the 6th June 2020

by the Registrar

Joseph
Reg