



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 31 OF 2023
(Arising from LDMA 119/2021, LDC No. 179/2021 and KCCALDR 97/2021)

RASHID NYENDE & 44 ORS.....**APPLICANTS**

VERSUS

SHOPRITE CHECKERS (U) LTD.....**RESPONDENT**

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

The Panelists:

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. Mr. Patrick Mugalula of M/S Bamwite, Kakuba & Co Advocates for the Claimant
2. Mr. Ivan Kyateka & Ms. Brenda Lwanga for the Respondent.

RULING

Introduction

- [1] By motion under Sections 33 and 39(1) and (2) of the Judicature Act Cap. 13 (from now JA) and Section 98 of the Civil Procedure Act Cap. 71 (from now CPA) and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-3 (from now CPR) the Applicants brought this application to hold the Respondent in contempt of Court of an order of this Court in Labour Dispute Miscellaneous Application (LDMA) No. 119 of 2021, to deposit a bank guarantee for US\$ 60,000, an order that the Respondent pays UGX 200,000,000/= as a fine for contempt of Court and that the

Respondent pays UGX 150,000,000/= as punitive/exemplary damages, interest thereon and costs of the application.

Background material facts

- [2] The background facts can be gathered from Rashid Nyende's supporting affidavit dated 17th March 2022.
- [3] The Applicants instituted a head claim¹ against the Respondent for various reliefs, including declaratory orders for breach of employment contracts.
- [4] On the 9th of September 2021, the Applicant filed LDMA No. 119 of 2021 for the Respondent to furnish the sum of UGX 10,000,000,000/=(Ten Billion Shillings) as security for its appearance because the Respondent, a foreign company, was ceasing operations in Uganda on the 30th of September 2021.
- [5] On the 26th of October 2022, this Court ordered the Respondent to deposit a bank guarantee for US\$ 60,000(Sixty Thousand United States Dollars) or its equivalent in Uganda Shillings within 30 days or not later than 25th November 2022. The Respondent has not complied with the order, hence this application.
- [6] The Respondent opposes the application. In his affidavit in reply, Jayte Slabbert, the Respondent's General Manager, avers that the Respondent has not refused to honour the court order but is aggrieved by it and has filed a Notice of Appeal against the order in LDMA No. 119 of 2021. He also avers that complying with the order would have rendered the intended appeal nugatory, and if there had been an execution order, the Respondent would have sought an order of stay. His final averment is that the application for leave to appeal is pending before this Court.
- [7] Counsel were invited to file written arguments. As of the 4th of August 2023, the Respondent had filed arguments while the Applicants had not. Although submissions do not necessarily have a direct bearing on the outcome of this application, it is expected that Counsel would file submissions to aid the Court in its decision-making. In advocacy, submissions are essential for parties to articulate their respective cases, tie in the law with the facts, and perhaps persuade and sway. Notably, in this jurisdiction, there is no penalty for failure to file submissions, but the High Court of Tanzania² equates filing of submissions to a hearing and

¹ Labour Dispute Reference No. 97 of 2021

² Per Rugazia J in Hamis Rajabu Musa Fujo v Omar Ismail Abdi Land Case No. 250 of 2005 as cited in M.Ssekaana and SN Ssekaana "Civil procedure and Practice in Uganda" at page 62

treats a failure to file submissions as non-appearance or failure to prosecute. Considering the importance of a hearing, an opportunity for submissions should not be lost.

- [8] Nevertheless, the nature of this application does not require the Applicant to do very much. Contempt proceedings are, by nature, an issue between the court and the potential contemnor, the party who has not complied with a court order.³ It is not a matter between the parties to a suit. The Applicant's duty is to inform the Court of the potentially contemptuous act.

Submissions of the Respondent

- [9] Mr. Kyateka, for the Respondent, suggested that the application's current form has disastrous consequences, as 27 of the 45 listed Applicants had entered settlement agreements with the Respondent. Counsel did not elaborate on the disastrous consequences or provide the settlement agreements.
- [10] Counsel cited **Onen David & 2 Ors v Otto Ocan & 2 Ors**⁴ for the definition of contempt and considerations for proving contempt. The Respondent argued that its justification for non-compliance was that it was dissatisfied with the court's order and had lodged a notice of appeal. An application for leave to appeal is pending before this Court, and complying with the order would have rendered the intended appeal nugatory.

Determination

- [11] This question requires the Court to consider whether the Respondent is in contempt of Court—first, the law. In **Washington Inima v Mohammed El Tahir and Another**⁵, we cited 'Black's Law Dictionary' 9th Edition, where contempt of court is defined as conduct that defies the authority or dignity of a Court. Contempt is an act or omission tending to "*unlawfully and intentionally violate the dignity, repute and authority of a judicial body, or interfering in the administration of justice in a matter before it.*"⁶
- [12] There is judicial concurrence on the tests for establishing contempt of Court. In **Megha Industries Ltd v Conform Uganda Ltd**,⁷ it was held that contempt of Court

³ See *Florence Dawaru vs Angumale Albino & Anor* H.C.M.A 0096 of 2016

⁴ HCMA No. 131 of 2019

⁵ LDMA 202 of 202 of 2021

⁶ H.C.M.A No. 131 of 2019

⁷ H.C.M.C No 21 of 2014

exists where (i)there is a lawful court order, (ii)the potential contemnor must have been aware of the court order, and (iii)must have failed to comply with the order. The authorities cited by Counsel for the Respondent are consistent with these dicta. Several other authorities, including **Ocen Kassim v Soroti District Land Board**⁸, **Brenda Nambi v Raymond Lwanga**⁹ and **Sarah Nyakato v Lin Jeng Liang**,¹⁰ list these three conditions for establishing the existence of contempt. In **Onen**(supra), Mubiru J. set a fourth qualification for contempt to stand, proven to be where the potential contemnor lacks just cause or lawful excuse for the violation.

- [13] Before a court finds a potential contemnor in civil contempt, it must satisfy the threshold on a balance higher than the balance of probabilities but lower than beyond reasonable doubt.¹¹
- [14] We shall, therefore, consider the matter before us against the threshold laid out in paragraphs [12] and [13] above.

Existence of a lawful Order

- [15] The existence of a lawful order was the common cause. The order, the subject matter of these contempt proceedings, was issued by this Court in LDMA 119 of 2021 on the 26th day of October 2022, in open Court, in the presence of Mr. Ivan Kyateka and Ms. Brenda Namayandha Lwanga, Learned Counsel for the Respondent. The presence of Counsel is significant, and we shall return to it in this ruling. The order was in unambiguous language. It read:

"IT IS HEREBY ORDERED THAT:

- (a) *The Respondent deposits the sum of US\$60,000 [United States Dollars Sixty Thousand Only] or its equivalent in Uganda Shillings by way of bank guarantee in Court within 30 days from the date hereof.*

The order was given under the hand of the Registrar of this Court on the 20th day of March 2023 and bore the seal of this Court. Therefore, the Respondent had until the 20th of April, 2023, to obey the order.

⁸ H.C.M.A 01 of 2019

⁹ H.C.M.A 213 of 2017

¹⁰ H.C.M.A 317 of 2022

¹¹ Hon Sitenda Sebalu v Secretary General of East African Community No. 8 of 2021 as cited with approval in H.C.M.A 324 of 2020 Andrew K. Lajul v UCDA and 2 Ors

Knowledge of the existence of the Order

- [16] It is beyond dispute that the Respondent was dissatisfied with the order. It filed a notice of appeal. There is, therefore, no question as to its knowledge of the existence of a lawful order. Its counsel, Mr. Kyateka, was in court at the delivery of the order, and his name was on it. We indicated that we would return to this point because, under Order 3 rule 4 CPR, service of process on an Advocate is presumed to be duly communicated and made known to the party whom the Advocate represents and shall be effectual for all purposes as if the process had been given to or served on the party in person. Further, under Rule 8 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 (*from now IC Rules*), a party may appear by himself or herself or by an agent or may be represented by an Advocate. For good measure, the Respondent does not deny knowledge of the order.
- [17] It is also common cause that the order with which the Respondent has suggested it is dissatisfied is the subject of these proceedings. Paragraphs 7, 8, 9, 10, 13, and 14 of Mr. Slabbert's affidavit in reply confirm this knowledge. It is, therefore, impossible for the Respondent to deny knowledge of the order.

Failure to Comply

- [18] The other test is the potential contemnor's failure to comply. In paragraph 8 of his affidavit, Mr. Slabbert avers that complying with the order would have rendered the intended appeal nugatory. In this way, under oath, the Respondent admits that it has not complied with the order. This admission leaves us with the final test because under the law on admissions, the need to prove a fact is dispensed with and means that a party has conceded to the truth of an alleged fact.¹²

Does the Respondent have any lawful excuse or just cause for non-compliance

- [19] Mr. Kyateka put the failure to comply with the intended appeal by way of filing a notice of appeal, applying for leave to appeal, and the absence of a threat of execution to invite an application for stay. In his view, this was a justifiable cause. Counsel anchored his thesis on the ratio in **the Onen case(supra)**, where the potential contemnor might escape a contempt order for just cause or lawful excuse.

¹² See *Matovu Luke & ORS vs. Attorney General*, H.C.M.A No. 143 of 2003

[20] From this argument, the question for consideration is whether the Respondent's disagreement with this Court's decision, its filing of notice of appeal and its application for leave to appeal in the absence of a threat of execution constitute a lawful excuse for non-compliance.

[21] Just cause derives from the Latin 'justa causa' or 'causa justa', meaning lawful ground.¹³ It means a legally sufficient reason. It is a burden placed on a litigant to show why a request should be granted or an action excused.¹⁴ As it stands, the law is that parties must obey court orders. Court orders are not issued in vain. The Respondent was, therefore, under a duty to follow the order of this Court. In **Housing Finance Bank Limited v Edward Musisi**¹⁵ the Court of Appeal held that

"the law is settled that a party who knows of an order, regardless of whether in the view of the party the order is null and void, regular or irregular, the party cannot be permitted to disobey it by reason of what the party regards the order to be. It is not up to the party to choose whether to comply or not to comply with such an order. 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."

[22] In the circumstances of Mr. Kyateka's otherwise spirited contention on his client's disagreement with the decision of this Court, his client had a duty to obey the order. The argument that the intended appeal and the absence of a process of execution to invite a stay does not, in our view, gain much purchase as just cause. It is not good, just or sufficient cause for the Respondent to say it was prevented from complying with the order of this Court because it was aggrieved with it and has filed a notice of appeal. That is not a lawful cause or excuse. In our view, that would not be a most unsatisfactory explanation for the non-observance of the lawful and existent court order. The Respondent's right to challenge the order of this Court, notwithstanding, it had a duty to obey the order, and it has not. Therefore, we are not persuaded that the lodgment of a notice of appeal or an application for leave to appeal constitutes good, just and lawful cause for failure to comply with an existing order.

[23] If there was to be substance in his hypothesis, Mr. Kyateka did not point us to any modern precedent supporting the proposition. The decisions this Court has had

¹³ Blacks Law Dictionary 11th Edn by Bryan Garner at page 1033

¹⁴ Ibid page 274

¹⁵ Court of Appeal M.A No. 158 of 2010

the opportunity to review point very much in the opposite direction. A most applicable judicial pronouncement on the Respondent's hypothesis was in **Ekau David v Dr. Jane Ruth Aceng and 2 Others**.¹⁶ In that case, Ssekaana J. was considering a submission on all fours with the argument before us. There, His Lordship observed;

"The respondents cannot hide behind the justification of filing an appeal and staying execution to purge themselves of contempt."

Another significant pronouncement was by the Honourable Lady Justice Basaza Wasswa in **Sendege Senyondo v The Bank Secretary Bank of Uganda & Another**¹⁷ where her Lordship held;

"it is however not a defence to an application to be found in contempt to say that the disobedience was a consequence of having challenged by way of appeal, the order under review for disobedience and the application to be found in contempt of."

The dicta of these two decisions places the Respondent's argument at polar opposites with the position of the law. The Respondent's principal defence to the contempt proceedings is irreconcilable with authorities of decided cases and, therefore, wholly unsustainable. As stated in **Betty Kizito v Dickson Nsubuga & 6 Ors**¹⁸ 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.

[24] The order of this Court was unambiguous, directing the Respondent to deposit a specific sum within a particular timeline. It is not open to the Respondent to refuse to obey the order because it is not satisfied. The Respondent is already in contempt for not obeying the order. The suggestion that the order would render the appeal nugatory is not realistically arguable. A deposit of security in court holds the security until a final determination is made, and the security is either released back to the party that deposited the same or becomes the subject of execution. The security is not lost to render any further proceedings an exercise in futility, moot or academic.

¹⁶ H.C.M.A No. 746 of 2018

¹⁷ H.C.M.A No. 98 of 2018

¹⁸ S.C.Civil Application No's 25 and 26 of 2021 cited in Juliet Kiconco v Godfrey Mucunguzi and 2 Ors H.C.M.A 1198 of 2023

- [25] Mr. Kyateka suggested, on the authority of **Uganda Revenue Authority V East Africa Property Holding LTD**¹⁹ that the absence of a threat of execution did not permit it to file for a stay of execution. But then, that is not the case in these proceedings. The analogy is misplaced because, under Order 43(4) CPR, the filing and lodgment of an appeal does not operate as a stay of execution.²⁰ This means that execution would ensue absent of stay, in satisfaction of the order of the Court. Again, the grain would be to obey the Court order regardless of what a party thinks of it. We, therefore, think the proposition of the absence of the threat of execution to be misplaced in the matter before us.
- [26] In L.D.M.A 119 of 2021, the security deposit is an interim measure. How is it to be expected that the contemnor shall abide by future orders and directions of the Court? Deposit of security under Order 40CPR is an interim protective measure before the proceedings reach completion. Under Section 8(2) of the Labour Dispute(Arbitration and Settlement) Act 2006, this Court has a statutory imperative to dispose of a labour dispute without undue delay. Further, Order 40 CPR discusses proceedings for deposit of security where there is intent to obstruct or delay the execution of a decree that may be passed against a party. It is a peremptory order intended to maintain an intermediary modicum of compliance. It is not a final order, and its principle considerations include disposal of property, removal of property from the jurisdiction or quitting jurisdiction. In his discourse on the nature of the possible contemptuous act, Mubiru J in **Dilipkumar P. Patel and 5 Ors v Kashyapkumar P. Patel and 10 Ors**²¹ observes that if the act has the effect of impeding the court's ability to adjudicate fairly in the proceedings before it by undermining its authority, such contempt must be purged before further steps may be taken. A party in contempt by disobeying an existing order cannot be heard in a different but related cause of action until a person has purged himself or herself of the contempt.
- [27] In our view, the Respondent has directly inhibited this Court's continued management of the main cause by not complying with the order.
- [28] In conclusion, it has been demonstrated that a lawful court order existed, the Respondent was aware of the order and did not comply with it. We have not been satisfied that there was lawful cause for noncompliance. For the reasons above, we would hold the Respondent in contempt of court.

¹⁹ C.A.C.A No. 144 of 2014 [2014] UGCA 83 (6 May 2014)

²⁰ See *Obwatan John Stephen v Wakholi James and 7 Others* H.C.M.A 180 of 2022

²¹ H.C.M.A No. 0840 of 2021

[29] What now remains is to establish the appropriate remedies.

Remedies

[30] The Applicant sought UGX 200,000,000/= as a fine for contempt of Court, UGX 150,000,000/= as punitive/ exemplary damages, and interest thereon at court rate from the date of award until payment in full together with costs of the application. Counsel for the Applicant did not find it necessary to guide this Court on his reasoning for the imposition of these fines or lay a basis for damages.

[31] Authorities of decided cases categorize differently the sanctions for civil and criminal contempt. In the *Inima case (supra)*, we observed that sanctions for contempt of Court are derived from common law decisions. Civil contempt is punishable by committing to civil prison, sequestration, fine or injunction of the contemnor.²² Civil contempt is intended to coerce the contemnor to do what has been ordered and can be done by the contemnor. It is about compliance with the Court order. An unconditional sentence for punishment or deterrence characterizes criminal contempt²³

[32] Regarding damages, the overriding principle appears to be that the Applicant must prove the actual loss suffered.²⁴ As the Applicants have not demonstrated any loss, we decline to award any damages.

[33] Precedent also holds that the court's coercive power in contempt proceedings should be utilized sparingly. In **Odoi Odome v Uganda Electricity Generation Company Ltd**²⁵ it was observed that it is trite that the power of punishing for contempt should be used only in serious cases or where the court is compelled to punish because of persistent and obstinate defiance and interference of the contemnor or if the conduct will prejudice the trial. The order issued by the Court was for a deposit of security. Indeed, contempt proceedings should not be used for execution of court orders. However, this Court is minded about exercising restraint. A finding of contempt is not to stir a storm in a teacup²⁶. We re-emphasise that the difficulty presented by the contemnor is that it cannot unilaterally decide what it must do with the Court order. To borrow from Ssekaana

²² See *Stanbic Bank(U) Ltd v Commissioner General URA M.A No. 42 of 2010[2011]UGcomm 13* as cited in *J.E.Nsangiranabo v Col Kaka Bagyenda & A.G H.C.M.A 671 of 2019*

²³ See *Dilipkumar P. Patel and 5 Ors v Kashyapkumar P. Patel and 10 Ors HCM 0840 of 2021*, See also *Shillitani v United Sates 384 US 364(1996)* as quoted in *Dilikumar*.

²⁴ Per Ssekaana J in *Nsangiranabo(supra)*

²⁵ HCMA 1088 of 2022

²⁶ Per Mubiru J in *Dilipkumar(Supra)*

J in **Ekau**²⁷ “a court order is not a mere suggestion or an opinion or a point of view”. Court orders must be obeyed. That is the rule of law to which we all owe fidelity and a positive duty. As Lord Jonathan Sumption remarked, “the alternative to the rule of law is capricious anarchy”²⁸, or as Ssekaana J. concurs, non-compliance with court orders “opens the door to chaos and anarchy”,²⁹ and we must close that door. Disregarding court orders creates difficulties in managing the case before the court.

- [34] The order now subject to these proceedings was not a final order of the Court. It was made under Order 40CPR, which has provisions for attachment like the attachment of property in execution of a decree. Paragraph 14 of the affidavit in support demonstrates that the Applicants know the Respondent’s Account Number 8706014962500 at Stanbic Bank Uganda Limited bearing the Respondent’s funds. These accounts are attachable before judgment under Order 40(6)CPR. Similarly, the accounts suggest the Respondent’s ability to comply with the Court Order.
- [35] The thesis suggested in **Dilipkumar**(supra) is that an order for contempt must include provision for purging. A potential contemnor is said to “hold the keys to the jail cell” or, as in the game of Monopoly, to hold a ‘get out of jail free card’. We have not been persuaded to impose the sanctions as suggested by the Applicant. But then, this Court must not become, as Mubiru J. most eloquently puts it, “fora for talk shows”³⁰. For this reason, we think the Respondent should be allowed to purge itself of the contempt and the Respondent is now re-ordered to deposit the security in LDMA 119 of 2021 within ten(10) days from the date hereof. By depositing US\$ 60,000 or its equivalent in Uganda Shillings with the Registrar of this Court within ten days, the Respondent will have purged itself of the contempt before proceeding with any other step in the matter.
- [36] As the right to audience before the Court is not restored until the contemnor has purged themselves, the Respondent shall not be entitled to prosecute its defence in the main cause and L.D.M.A Nos. 179 and 189 of 2022 until it has purged itself of the contempt.

²⁷ H.C.M.A No. 746 of 2018

²⁸ The remark is attributed to Lord Sumption who served as Justice of the Supreme Court of the United Kingdom between 2012 to 2018. He made the remark in the delivery of the 2019 BBC Reith Lectures on the relationship between Politics and Law. He authored a collection of essays published in “Law in a Time of Crisis”.

²⁹ Ekau(supra)

³⁰ H.C.M.A No. 0840 of 2021

- [37] Should the Respondent refuse to purge itself and continue in contempt after the expiry of ten(10) days from the date of this order, the Respondent shall have imposed on it a fine at a quarter per centum(0.50%) of the security sum of US\$ 60,000 for every day of its continued contempt after the 25th of March 2024. The daily fine of US\$300(United States Dollars Three Hundred) shall only be lifted if the Respondent purges itself. The imposition of a daily fine is because this is a continuing contempt. We are fortified in imposing a daily fine by the persuasive Canadian authority of **Alberta Ltd. (Dave's Diesel Repair) v Francis Emmanuel Mella and Others**,³¹ where the Honourable Madam Justice D.L Shelby upheld a daily fine for a continuing contempt. In the matter before us, the contempt relates to the administration of justice and the management of the dispute itself.
- [38] On costs, this Court has ruled that employment dispute costs are awarded against an unsuccessful offending party.³² The Respondent is held in contempt, having not obeyed the court order that prompted this application. As contempt proceedings are between the Court and the contemnor, there shall be no order as to costs.

Decisions and Orders of the Court

- [39] It is declared that the Respondent is in contempt of Court and;
- (i) The Respondent is directed to purge itself of the contempt by complying with the order in LDMA 119 of 2021 within ten days from the date hereof.
 - (ii) If the Respondent continues in contempt of the order in LDMA 119 of 2021 and does not purge itself, a daily fine of US\$ 300 (United States Dollars Three Hundred) shall be imposed on it until the 18th of June 2024 when the Respondent's General Manager- Jayte Slabbert is directed to appear before this Court in person.
 - (iii) The Respondent is not permitted to prosecute its defence in the main cause and any applications, particularly LDMA Nos. 179 and 189 of 2022 or any other matters arising for LDR 79 of 2021 before it has purged itself of the contempt.
 - (iv) If these orders are not complied with, the Respondent's General Manager, Mr. Jayte Slabbert, is directed to appear in Court in person on the 18th of June 2024 at 9:30 am to show cause and;

³¹ 2016 ABQB 174 <https://canlii.ca/t/gnzpr>, retrieved on 2024-03-11

³² Joseph Kalule v GIZ LDR 109/2020

(v) There shall be no order as to costs.

It is so ordered this 15th day of March 2024


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.







15th March 2024

10.54 a.m.

Appearances

1. For the Applicants, Mr. Rashid Nyende & 13 Ors
2. For the Respondent, None.

Court Clerk: **Mr. Samuel Mukiza.**

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court