THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS APPLICATION NO. 863 OF 2025

ARISING FROM MISCELLANOEUS APPLICATION NO. 1863 OF 2017

ARISING FROM CIVIL SUIT NO. 095 OF 2009

1. EDITH NANTUMBWE KIZITO
2. ERINA NANKYA
3. JOSHUA MUKALAZI ..... APPLICANTS

VERSUS

1. MIRIAM KUTEESA
2. COMMISSIONER LAND REGISTRATION ... RESPONDENTS

BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU

RULING

1. This application was brought under the provisions of Article 26 of the Constitution of the Republic of Uganda 1995, S.37 of the Judicature Act, S. 98 of the Civil Procedure Act and O. 52 rr. 1, 2, and 3 of the Civil Procedure Rules. It was seeking for orders that;

a) The Respondents be held in contempt of court orders issued by court on 30th August 2016 and be committed to civil prison for a period of six months.

b) The 1st Respondent's entry in the Register or any other transaction be cancelled for having been registered in contravention of the settlement/ compromise of the decree.

c) A declaration that the 1st Respondent misled court in obtaining the order dated 26th March 2018 vide Miscellaneous Application No. 1863 of 2017.

d) An order that the 1st Respondent be punished for the contempt of a court order by payment of a court fine of Ug. shs. 100 million to the court.

e) An order that the Respondents pay a sum of Ug.shs. 500 million to the Applicants as exemplary / punitive damages.

f) An order that the Applicants be paid costs of this application.

2. The Application was brought by notice of motion which was supported by an affidavit that was sworn by the 3rd Applicant. Grounds of the application were laid in the notice of motion and affidavit in support. Briefly the grounds were that;

a) In the year 2009, the 1st Respondent filed HCCS. No. 095 of 2009 for recovery of land comprised in Kibuga Block 28 Plot 540 at Makerere.

b) The suit was heard exparte in favour of the 1st Respondent.

c) The Applicants applied to set aside the exparte judgement but their application was dismissed.

d) The Applicants then appealed against the dismissal to the Court of Appeal which appeal was amicably settled by consent of the parties.

e) That upon realising that they were likely to lose the suit land which they had occupied since 1973, the Applicants

approached the 1st Respondent, engaged in post judgment negotiations and finally executed a settlement /compromise of the decree which was endorsed by court.

f) By the said compromise the 1st Respondent agreed to be paid a sum of Ug.shs. 750 million in lieu of the suit land which marked the final settlement of the dispute.

g) To their surprise the Applicants discovered that in the year 2017, after executing the compromise, the 1st Respondent applied to court for further orders seeking to recover the land by implementing the decree which had already been satisfied.

h) The 1st Respondent's act of applying for further orders and seeking orders to recover the land contrary to the settlement/compromise constitutes contempt of the same.

i) On 28/2/2025, the 1st Respondent in further disregard of the said compromise applied to the 2nd Respondent for her reinstatement on the certificate of title which also constituted further contempt of the compromise.

j) That the 1st Respondent having accepted to be paid a sum of Ug.shs. 750 million in lieu of the land and having bound herself not to enforce the decree in HCCS. No. 95 of 2009 cannot claim any interest in the said land.

k) That they had been subjected to loss, great suffering, inconvenience as a result of the Respondents' conduct.

3. The 1st Respondent filed an affidavit in reply by which she called upon court to dismiss the Application with costs. Briefly stated that;

a) In 2009 she instituted HCCS. No. 95 of 2009 against the Applicants together with the 2nd Respondent and judgment was given in her favour.
b) By the said judgment the 2nd Respondent was ordered to re-construct the record in respect of land comprised in Kibuga Block 28 Plot 540 at Makerere, enter the name of late Musa Muganzi Kalanzi in the Register as proprietor of the said land, make a Substitute certificate of title in lieu of the original title and register the names of the said deceased as proprietor.
c) The 2nd Respondent was also ordered to issue to the 1st Respondent a Special Certificate of title for the suit land and enter her names on the Register as Administrator to the estate of the late Musa Muganzi Kalanzi.
d) The judgment and decree in HCCS. No. 95 of 2009 has to date not been set aside and still stands.
e) The 2nd Respondent was not party to the said compromise and was therefore obliged to comply with the same.
f) The 2nd Respondent indeed complied with the decree in HCCS. No. 95 of 2009 and reinstated the 1st Respondent as ordered by court on 1/12/2010.
g) The Applicants then filed CACA No. 69 of 2013 in the Court of Appeal and dishonestly procured a consent with the 1st Respondent.
h) The Applicants then re-registered themselves on the Certificate of title to the suit land by cancelling the names of the 1st Respondent from the same.
i) That the Consent settlement / compromise of decree in HCCS. No. 95 of 2009 was null and void because it was not



signed by a judge and a registrar cannot compromise a judgment/decree entered by a judge.

j) That the said compromise did not involve all the parties to HCCS. No. 95 of 2009.

k) The Applicants were dishonest because at the time of making the said compromise, they had illegally subdivided the suit land into several plots and the said compromise was merely intended to sanitise their illegalities.

l) That the 1st Respondent has never received the alleged 750 million as indicated in the compromise.

m) By a ruling of court in HCMA No. 1821 of 2020 the court confirmed that the Applicants had no interest in the suit land since HCCS. No. 95 of 2009 had been determined against them.

4. The 2nd Respondent did not file any affidavit in reply.

5. The Applicants filed an affidavit in rejoinder which was sworn by the 3rd Applicants by which it was stated that;

a) That the 1st Respondent did not deny having entered into the compromise/ settlement and is therefore bound by the same.

b) The 1st Respondent's claim that the compromise was null and void was devoid of any merit as the same has since not been set aside by any court of competent jurisdiction.

c) That if at all the 1st Respondent felt the compromise was null and void she ought to have applied to court to have it set aside.



d) That attempts by the 1st Respondent to set aside the decree by Court of Appeal were all futile and she subsequently applied for execution to recover the 750 million.

6. ISSUE

Whether the Respondents acted in contempt orders of court.

7. LEGAL REPRESENTATION

The Applicants were represented by M/s S. K. Kiiza & Co. Advocates while the 1st Respondent was represented by M/s. Tumuhimbise & Co. Advocates.

8. APPLICANTS' SUBMISSIONS

a) Counsel for the Applicants filed written submissions which I carefully studied. Briefly he submitted that courts had overtime set down conditions that were necessary in order to prove contempt of court i.e that there must be a lawful court order in existence, knowledge of the said order by the contemnor, and disobedience of the order by the contemnor. That in the instant case the orders before court were the compromise/settlement of decree that was executed by the parties on 3/8/2016 and the Court of Appeal Decree by which the 1st Respondent bound herself not to enforce the judgment of the High court. The said orders had never been set aside by court. That the 1st Respondent had knowledge of the said orders because they were executed by consent.

b) However, in 2017, the 1st Respondent filed an application seeking orders contrary to the settlement and obtained orders on 26th March 2018. The 1st Respondent was therefore liable in contempt of court. Counsel for the Applicants cited several authorities in support of his submissions which I carefully studied.

9. 1ST RESPONDENT'S SUBMISSIONS.

a) Counsel for the 1st Respondent also filed written submissions which I carefully studied. Briefly he submitted that the compromise /settlement order referred to by the Applicant was not an order of court because both the Court of Appeal and the Supreme Court had decided so. That in Civil Reference No.85 of 2020, the Court of Appeal had held that all purported settlements after the decision of court in HCCS. No. 95 of 2009 were illegal and of no legal consequence. That the 1st Respondent was not in contempt but was only enforcing decisions of court in HCCS. No. 95 of 2009 and HCMA No, 1863 of 2017. That the consent settlement was not an order of court but a mere agreement of parties and thus not an order capable of being violated. The said consent did not in any way set aside the judgment and decree in HCCS. No. 95 of 2009.

b) That on the contrary it was the Applicants who were in contempt of orders of court in HCCS. No. 95 of 2009 when they illegally procured a consent in Civil Appeal No. 69 of 2012 with the intention of setting aside the decree in HCCS.

No. 95 of 2009 which had already been executed. Counsel also cited several authorities which I carefully studied.

10. SUBMISSIONS IN REJOINDER

Counsel for the Applicants filed submissions in rejoinder which I carefully studied. Briefly he submitted that the compromise/settlement of decree was arrived at after the parties had engaged in post judgment negotiations, and the same was endorsed by court. It therefore became an order of court binding on all parties. He cited the case **Saraj Gandesha vs. Transroad ltd. SCCA No.13 of 2009** where the court found that a "consent variation order" that had been executed by the parties after the judgment was a valid order of court. He reiterated his earlier submissions and called upon court to find the Respondents in contempt.

11. DECISION OF COURT

Whether the Respondents acted in contempt orders of court.

Contempt of court connotes conduct that defies the authority of dignity of court[1]. In the case of **Nsangiranabo[2]** it was held that for 'contempt of court to be established, it must be shown that there exists a lawful order, that the contemnor has knowledge of the said order, and that he/she has failed to comply with the same

[1] *Uganda Super League v. Attorney General, Constitutional Application No. 73 of 2013.*
[2] *Nsangiranabo v. Col. Kaka Bagyenda and Anor (Civil Miscellaneous Application 671 of 2019) Arising out of Miscellaneous Cause No. 203 of 2019.*

(disobeyed the order). After carefully studying the pleadings and proceedings on record the submissions of both counsel plus the relevant law, I established as follows;

a) The 1st Respondent instituted HCCS. No. 95 of 2009 against the 2nd Respondent, the Applicants and three other persons in relation to land comprised in Kibuga Block 28 Plot 540 at Makerere. The case proceeded exparte against the defendants and judgment was delivered in her favour on 4th October 2010. By the said judgment the court found that the suit land formed part of the estate of the late Musa Muganzi to which the 1st Respondent was the legal Administrator. Efforts by the Applicants to set aside the said judgment were all unsuccessful. The record shows that the matter was heard at both the Court of Appeal and Supreme court and in all these courts the Applicants did not get any meaningful remedy.

b) The parties eventually executed a document entitled "SETTLEMENT/ COMPROMISE OF A DECREE". By the said document the parties agreed interalia that the 1st Respondent would be paid a sum of Ug. shs. 750 million in lieu of the suit land and that this money was to settle all claims on the suit land and all beneficiaries and claimants to the estate of late Musa Kalanzi Muganzi. The said compromise was deemed to be in full and final settlement of the decree in HCCS. No. 95 of 2009.

c) The Applicants alleged that the 1st Respondent after executing the compromise and without setting it aside went



back to court and applied for orders contrary to the said compromise.

a) The 1st Respondent did not deny having executed the said compromise even though she alleged that it was null and void. I however must note that the issue of validity of the said compromise cannot be resolved in the instant application as none of the parties has filed any application to challenge or set aside the said compromise. However, in paragraph 20 (f) of her affidavit in reply the 1st Respondent specifically deponed that she has never been paid the Ug.shs. 750 million. The Applicants did not make any reply to this averment which implies that indeed the 1st Respondent was not paid as agreed in the compromise. It is now a settled legal principle that facts in an affidavit that are not rebutted by the opposite party are deemed to be admitted. (See **Samwiri Massa vs Rose Achen**[3] The Applicants having failed to rebut the aforementioned averment, this court is left with no option but to assume that it is true.

d) Suffice to note that the compromise was made way back in 2016 which is close to 9 years ago. The Applicants have not given clear reasons as to why they have not met their part of the bargain. A clear scrutiny of the compromise shows that it was intended to be a give and take arrangement whereby the Applicants were to pay 750 million to the 1st Respondent in lieu of the suit land. The Applicants having failed to honour their part of the bargain cannot insist on having the suit land as well. The Applicants want to benefit from the compromise

[3] **(1978) HCB 297**).

which they too have not honoured. They are definitely coming to court with unclean hands and this cannot be sanctioned by courts of law. He who comes to court must come with clean hands.

e) Notwithstanding the above, I have also noted that when considering this same matter in SCMA No.20 of 2014, the Supreme Court made a pertinent finding which cannot be ignored by this court. The said finding was to the effect that HCCS. No.95 of 2009 was actually fully executed way back in 2010 under Instrument No. 479500 by which the suit land was registered in the names of the 1st Respondent as administrator to estate of late Musa Muganzi Kalanzi as ordered by court. The Supreme Court further found that all other subsequent efforts by the Respondents (current Applicants) to change the status quo using consent orders were futile. The findings of the Supreme Court are binding on this court and I cannot depart from them.

f) I also note that in HCMA 1863 of 2017 the 2nd Respondent was ordered by High Court to implement the orders issued under HCCS. No. 95 of 2009 or else he would be held in contempt and he accordingly complied. The said order has neither been reviewed nor set aside by court. The same High court cannot turn around and hold the 2nd Respondent in contempt for enforcing what he was ordered to do. This would not only cause confusion but would be tantamount to abuse of court process.

g) For all the reasons advanced above this application hereby fails and is dismissed with costs to the 1st Respondent.

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DATED at Kampala this 21st day of November 2025



JUDGE.