

**THE REPUBLIC OF UGANDA**

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

**[COMMERCIAL DIVISION]**

**MISCELLANEOUS APPLICATION No. 737 OF 2013**

**ARISING OUT OF ARBITRATION CAUSE NO/AB/06/2011**

**INTEX CONSTRUCTION LIMITED ::::::::::::::::::::APPLICANT/DECREEHOLDER**

**VERSUS**

- 1. ATTORNEY GENERAL**
- 2. THE PERMANENT SECRETARY,  
MINISTRY OF FINANCE, PLANNING ::: RESPONDENTS/ JUDGMENT  
DEBTORS  
AND ECONOMIC DEVELOPMENT/  
SECRETARY TO THE TREASURY**

**BEFORE: HON JUSTICE B.KAINAMURA**

**RULING**

This is an application by Notice of Motion under Sections 33 and 36 of the Judicature Act and Rule 3(1) (a); 6 and 8 of the Judicature (Judicial Review) Rules, 2009 for an order of mandamus to be issued to compel the Permanent Secretary Ministry of Finance, Planning and Economic Development/ Secretary to the Treasury, to pay to the applicant the decree holder amounts due in the award filed in the High Court, Commercial Division AB/06/2011, i.e. UGX 31,572,102,251.79/= and Euros 29,955.97, through their Lawyers Tumusiime, Kabega & Co. Advocates and costs of the application.

The grounds of the application are set out in the affidavit sworn by Enos K. Tumusiime that;

Following a breach of the construction contract between applicant and respondent, the applicant commenced arbitration proceedings that resulted into the award by Hon. (JSC) (Retired) A.N. Karokora (Arbitrator) delivered to the parties on the 30<sup>th</sup> August 2010.

That the said award was on 24<sup>th</sup> June 2011 filed in the High Court, Commercial Division under Reference No. AB/06/2011.

Under the said award the applicant was awarded special damages, interest, general damages and costs.

Soon after the taxation of costs, the applicant obtained a certificate of order against government on 17<sup>th</sup> September 2012 and no appeal or further proceedings have been preferred against the award and orders of taxation.

The applicant has made several demands for payment of the amounts due in the award and costs but the same have been ignored.

It is the statutory duty of the 2<sup>nd</sup> respondent to make payments of the judgment debt in accordance with the award.

It is just and equitable that an order of mandamus issues to compel the respondents to make full payments of the awarded sum.

There are three affidavits in reply to this application deposed by Martin Mwambutsya, Francis Atoke, and George Kallemera.

Mr Mwambutya deposed that;

The applicant has not served the respondents with any demand which they have wilfully refused to honor.

The respondent filed an appeal against the award of costs in the matter and the court reduced the same.

The current application was filed in court before the aforementioned ruling was given and Certificate of Order against Government has not been amended.

The current application is therefore premature and incompetent.

The respondent filed an application Misc. Appl. 632 of 2010 to set aside the arbitral award which has not been heard by this honorable Court.

The application has a high likelihood of success which may be compromised by hearing the current application before it is finally disposed off.

Mr. George Kallemera and Mr. Francis Atooke deposed similarly stating that;

The Government of Uganda is committed to settling its indebtedness arising from court awards against it.

The certificate of order against government was issued against the respondent after the budgetary allocations for court awards for the financial year 2013/14 had already been allocated by government.

The applicant's claim will be approved and processed for payment as and when the funds are allocated.

In an affidavit in rejoinder, Mr. Tom Magezi deposed that;

The applicant served several demands for payment upon the respondent.

An amended certificate of order was also extracted and served on the respondents on 11<sup>th</sup> Feb. 2015.

The application to set aside the award was dismissed and therefore, there is no pending application before court.

Counsel for the applicant raised and submitted on three issues. The first issue; *whether an order of Mandamus should issue to compel the 1<sup>st</sup> and 2<sup>nd</sup> respondents to pay to the applicant the amounts due under Arb. Cause No.AB/06/2011 (Intex Construction Ltd Vs Attorney General)*, Counsel submitted that under **Section 33 and 36(1) (a) of the Judicature Act** the High Court is enjoined to make an order of mandamus. Counsel cited the case of ***Goodman Agencies Ltd & 3 Others Vs Attorney General & Treasury Officer of account Misc. Appl. No.126 of 2008***, where court observed that the applicant for an order for mandamus must show

that; it enjoyed a right, the right is specified by a decree of court, a certificate of order against the government has been extracted and duly served on the respondents and that the respondents refused to honor the certificate of order by refusing to pay the amount decreed in the certificate of order. Counsel submitted that the applicant has satisfied all the four conditions precedent to the issue of the order of mandamus and prayed that the order should issue.

Counsel for the respondents submitted that regarding the first issue the respondent has not done any of the aforementioned requirement under **Section 19 of the Government Proceedings Act**. Counsel added that there was no letter of demand made on the respondent. Counsel cited the case of **Patrick Kasumba Vs Attorney General and Treasury Officer of Accounts Misc. No. 121 of 2010** in where court stated that before the remedy of mandamus is given; the applicant must show a clear legal right to have the thing sought by it done. Counsel added that **Sections 14 and 15 of the Public Finance and Management Act 2015** require the Secretary to Treasury to pay the funds that are approved and appropriated by Parliament. Counsel stated that these can be done after the required work plans have been submitted.

In submissions in rejoinder, Counsel for the applicant submitted that there is a copy of the decretal award attached to the applicant's submissions as Annex "A" and a letter of demand dated 10<sup>th</sup> February 2015 marked Annex "C", with a copy of the amended certificate of order dated 10<sup>th</sup> February 2015. Counsel further argued that there is nothing in **Sections 14 and 15 of the Public Finance and Management Act** that takes away the 2<sup>nd</sup> respondent's duty to pay. Counsel submitted that the 2<sup>nd</sup> respondent did not file an affidavit in reply to oppose the application and did not also appear in court to challenge the application. Counsel therefore submitted that the 2<sup>nd</sup> respondent agreed to the application for the order of mandamus.

Addressing issue two; *whether the respondents are liable to pay the costs of this application to the applicant*, Counsel for the applicant submitted that the applicant continues to suffer as a result of the respondent's failure to pay the award amounts and costs of the arbitration. Counsel added that it is therefore only fair and just that the respondents pay the costs of these proceedings.

Counsel for the respondents submitted that all the four grounds for grant of an order of mandamus cannot hold because there was no letter of demand made on the respondent.

Counsel added that if any letter of demand was made then it must have been before the parties considered the possibility of amicable settlement. Counsel submitted that no demand has been made since failure to reach an amicable settlement. Counsel relying on the case of ***Patrick Kasumba Vs Attorney General and Treasury Officer of Accounts Misc No.121 of 2010*** submitted that the order of mandamus is discretionary. Counsel added that according to ***Sections 14 and 15 of the Public Finance and Management Act 2015***, the Secretary to the Treasury is to pay funds approved and appropriated by Parliament.

Regarding the prayers, Counsel for the applicant submitted that the order of Mandamus does issue to compel the Permanent Secretary, Ministry of Finance, Planning and Economic Development/Secretary to the Treasury/Officer of Accounts to pay the applicant the amounts due under the award i.e UGX 44,212,147,675/= and Euros 34,258.81 as at 27<sup>th</sup> October 2015, interest at 25% per annum and 6.5% per annum on the Shs and Euros till payment in full, plus costs of UGX 506,390,181/= and UGX 5,277,200/= and costs of this application.

Counsel for the respondent prayed that court finds that there is no need at this time to compel, force or oblige the respondents to pay and the application be dismissed with costs.

In rejoinder, Counsel prayed that the an order of Mandamus issues to compel the Permanent Secretary, Ministry of Finance and Planning and Economic Development / Secretary to the Treasury to pay the decretal award amounts, costs of the award and costs of the application.

### ***Decision of Court***

I have carefully considered the arguments by both Counsel. This is an application for an order of mandamus.

The background briefly is that the applicant obtained an arbitral award against the government arising from **ARBITRATION CAUSE NO/AB/06/2011**. The applicant filed this application to have the award enforced through an order of mandamus.

In an affidavit in reply, by Mr. Mwambutsya denied existence of an amended certificate of order against government as well as service of notices of demand. He claimed that there is also

an appeal against the arbitral award pending in court. However in rejoinder, Mr. Tom Magezi deposed that there was service of demands on the respondents as well as an amended certificate of order against the government.

The conditions that precede the grant of such an order are highlighted in the case of **Goodman Agencies Ltd** (supra). With its submissions the applicant attached a certificate of order against the government extracted and dated 10<sup>th</sup> February 2015 and a letter demanding payment received on the 11<sup>th</sup> of February 2015 by the Attorney General's chambers and on 12<sup>th</sup> by the Ministry of Finance, Planning and Economic Development. Accordingly I agree with Counsel for the applicant that the applicant satisfies the conditions to be considered before the order of mandamus issues.

In the premis, this application succeeds. An order of mandamus is hereby issued requiring whoever holds the office of Treasury Officer of Accounts/ Secretary to the Treasury to pay on being presented with the order issued by this court to the applicant/ decree holder through its Lawyers in full satisfaction of the award in CAD/ARB. No. 14 of 2008 and M. A No. 632 of 2011.

The applicants are awarded the costs of this application.

I so order.

**B. Kainamura**

**Judge**

**8.04.2015**