

The background to the application is as follows:-

The Applicant /Plaintiff filed High Court Civil Suit 657/2003 against the First Respondent for breach of contract and recovery of various sums of money both in US Dollars and Uganda Shillings. The contract had been to carry out works on the water supply system in Luwero Town.

5 The First Respondent filed a defence thereto.

The Applicant filed another suit High Court Civil Suit No. 939/2004, against the First Respondent, again for breach of contract and seeking to recover sums in US dollars and Uganda Shillings. The contract had been to do works on the water supply system and installation of water reservoirs in Ntungamo Town.

10 The First Respondent/Defendant filed a defence and also made a counter claim.

Both cases were heard and the judgments were delivered by Justice Kiryabwire as he then was.

As regards High Court Civil Suit 657/2003 the Applicant was rewarded the following reliefs:-

- 1) Shs. 431,883,227.23/- for unpaid certified works. 70% of the sum payable in US dollars and 30% in Uganda Shillings.
- 15 2) Value of materials left at the site Shs. 162,333,800/-.
- 3) Shs. 46,043,716.30/- retained money 70% thereof payable in US dollars and 30% in Uganda Shillings.
- 4) General damages of Shs. 70,000,000/-
- 5) Interest of 4% on the awards in US dollars and 24% on Uganda Shillings on items 1, 2, and 3 from
20 11.01.2001 until payment in full.
- 6) Interest of 8% per annum on general damages from the date of judgment until payment in full.
- 7) Costs of the suit. – Refer to the decree marked Annexure A₂ to the Applicant's affidavit.

The Applicant/Plaintiff extracted "**A Certificate of Order Against Government**"- Annexure B₁.

On 26.02.10, the Registrar certified the amounts payable to the Applicant/Plaintiff by the First
25 Respondent / Defendant as follows

- a) Uganda Shillings 2,594,961,209/-

- b) US Dollars \$375,868.02
- c) Shs. 72,800,000/- general damages.

All the sums included interest as at 20.02.10. However, the certificate did not include the amounts payable in respect of costs.

5 Two applications had been filed under the suit. That is:-

- i) **High Court Miscellenous Application 555/2008 – Attorney General vs. Combined Services Ltd.** The application was dismissed and costs awarded to the Applicant/the Respondent – Annexure A₃.

The costs were taxed on 04.03.10 and a Certificate of Order Against Government issued on 28.06.11
10 for the sums of Shs. 5,017,000/- Annexure B₃.

- ii) **High Court Miscellenous Application No. 596/2009 Attorney General vs. Combined Services Ltd.** The application was dismissed with costs to the Applicant / then Respondent – Annexure A₄. The costs were taxed on 04.03.10 and a certificate of order against Government issued on 28.06.11 in the sum of Shs. 4,058,000/-. – See Annexure B₄.

15 The Bill of Costs in Civil Suit 657/03 was also taxed on 04.03.10 and allowed at Shs. 39,993,107/- - Refer to Annexure B₅- Certificate of Order against Government.

As regards **HCCS 939/2004**, the following orders were made by the trial judge.

- 1) US dollars \$11,021 – payable to the Plaintiff under Certificate No. 14.
- 2) a) US dollars \$23,548 was due and owing to the Plaintiff /Applicant.
- 20 b) The Defendant (Respondent) was entitled to offset US Dollars \$23,548 against the claim for advance payment bond based on the documentary evidence before court, in the event that it had already been paid by the Insurance Company.
- 3) a) Interest at the rate of 4% per annum on (1) from 29.11.2000 and on 2(a) from 11.08.2000.
- 25 b) General damages to the Plaintiff/ Applicant of US dollars \$ 5,000 with interest at the rate of 4% per annum from the date of judgment – 14.02.08 until payment in full.

4) Costs of the suit to the Plaintiff.

5) Remedies in the counter claim:-

a) Shs. 41,306,428/- awarded to the Defendant (First Respondent) being recovery of the advance payment made to the Plaintiff (Applicant)

5 b) Interest at 24% per annum from 15.01.01, until payment in full.

c) The Defendant (First Respondent) was awarded half of the costs of the counter claim.

- See Annexure A₁- (Decree) to the Applicants affidavit in support.

The Plaintiff (Applicant) extracted a Certificate of Order Against Government- Annexure B₂. On 10 04.03.10, the Registrar certified the amount payable to the Plaintiff/Applicant by the Defendant (First Respondent) as US dollars \$55,666.42 together with interest as of 20.02.10. The certificate did not include the amount payable as costs.

The Plaintiff/Applicant's Bill of Costs was taxed on 08.07.15 and allowed at Shs. 7,953,500/-. – Refer to Certificate of Taxation Annexure B₆ to affidavit in support.

15 All the Certificates of Order Against Government were served on the First Respondent and on 02.01.14, the First Respondent, then Defendant made payment of Shs. 2,000,000,000/- to the Plaintiff in respect of the claims in both suits. – Refer to Annexure G to the affidavit in reply.

On 23.07.14, Counsel for the Applicant notified the First Respondent that Shs. 2,000,000,000/- was part payment of the amount due. See Annexure C affidavit in support. Further that, computation of 20 the money payable should be strictly in conformity with the decree. According to the letter, the amount outstanding as of 30.06.14, was Shs. 6,442,969,027/- and US dollars \$ 521,533.66.

The Plaintiff's/ Applicant's lawyers demanded for the Defendant / First Respondent's computation of the outstanding amount payable to the Applicant less what was paid on 02.01.14, indicating that, the agreed balance and claim could be submitted for payment to avoid further accumulation of interest.

25 The First Respondent/Defendant did not pay the amount indicated by the Applicant hence the present application.

The parties filed written submissions but no issues were framed. Having carefully gone through the submissions of both Counsel, court is left to determine **whether this is a proper case for the issue of writ of mandamus.**

5 It is trite law that ***“the High Court has discretion under S.37(1) of the Judicature Act, to grant an order of mandamus in all cases in which it appears to the High Court to be just and convenient to do so. An order may be made under S. 37(2) of the same Act unconditionally of on such terms and conditions as the High Court thinks fit.”***

The following circumstances must be established by the Applicant in order to obtain a writ of mandamus:-

- 10 - A clear legal right and a corresponding duty in the Respondent.
- That some specific act or thing which the law requires that particular officer to do has been omitted to be done by him.
 - Lack of any alternative.
 - Whether the alternative remedy exists but is inconvenient, less beneficial or less effective or totally
- 15 ineffective.

However, it should be borne in mind that decided cases have established that ***“mandamus will not issue to enforce doubtful rights. The duty to perform the act must be indisputable and plainly defined.”*** – See **Nampogo Robert & Another vs. Attorney General H.C. CVMC 0048/09.**

- Doubtable rights:

20 Submissions of both Counsel raise issues that amount to requiring this court to interpret the judgment of the trial judge which this court has no jurisdiction to do. That is, what type of interest was awarded by the trial court.

Also raises issues of what the balance of payment due are both in dollars and in Uganda shillings, which cannot be properly determined until the issue of what interest to apply whether compound or

25 simple have been determined. Thereafter the calculations of what balance is due to the Applicant can be properly made and offset made for the benefit of the Respondent.

Therefore the issues make the right of the Applicant doubtful until they are solved by a court with jurisdiction to interpret the judgments that were issued by the trial court. The application sought by the Applicant cannot be granted. – Decided cases have established that ***“mandamus cannot issue where the rights of the party are doubtful or are being disputed.”***

- 5 It is accordingly dismissed and the parties are advised to seek appropriate intervention to give proper interpretation to the trial judge’s judgments to enable the Applicant determine the balance due and owing to him in both US dollars and Uganda Shillings.

Each party should bear its own costs.

10 **FLAVIA SENOGA ANGLIN**

JUDGE

20.02.17